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ABSTRACT

These procedures document the statutory authority of the North Carolina Division for Exceptional Children, with regard to the following aspects of programs and services for special needs children: definitions; identification, screening, evaluation, and placement; observation; initial conference prior to school-based committee referral; referral; school-based committee; administrative placement committee; comprehensive screening and evaluation; special identification procedures; required and recommended screening and evaluation; reevaluation; individualized education program for the handicapped, group education program for the academically gifted, and educational program for the pregnant; confidentiality and access to records; continuum of programs and services; maximum class size; due process procedures for parents and children; selection of surrogate parents; procedures for determining and assigning surrogate parents; responsibilities of surrogate parents; agencies responsible for administration of procedures; full and appropriate services; disciplinary suspensions; equal education opportunities plan; annual census and listing of students; joint planning; private schools--standards and state board approval; responsibilities of the Division for Exceptional Children; qualifications and certification of educational personnel; categorical exceptional children funds for local school administrative units; transportation; materials, supplies, and equipment; funds to Department of Human Resources and Department of Correction; organization and administrative structure of Governor's schools; program compliance review; and "Willie M." children. (JDD)

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PROCEDURES

Governing Programs and Services for Children with Special Needs

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SUPPORT SERVICES

DIVISION FOR EXCEPTIONAL CHILDREN

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SECTION .1500 - PROCEDURES GOVERNING PROGRAMS AND SERVICES FOR CHILDREN WITH SPECIAL NEEDS

.1501 DEFINITIONS

A. Children with Special Needs. The term "children with special needs" includes, without limitation, all children who because of permanent or temporary mental, physical or emotional handicaps need special education, are unable to have all their educational needs met in a regular class without special education or related services, or are unable to be adequately educated in the public schools. It includes those who are autistic, academically gifted, hearing impaired, mentally handicapped, multihandicapped, orthopedically impaired, other health impaired, pregnant, behaviorally-emotionally handicapped, specific learning disabled, speech-language impaired and visually impaired. The terms used in this definition are defined as follows:

(1) Academically Gifted. Academically gifted students are defined as those who demonstrate or have the potential to demonstrate outstanding intellectual aptitude and specific academic ability. In order to develop their abilities, these students may require differentiated educational services beyond those ordinarily provided by the regular school program.

(2) Autistic. Autism refers to a severe and chronic developmental disorder that affects communication and behavior. The essential features include disturbances of:
(a) developmental rates and/or sequences,
(b) responses to sensory stimuli,
(c) speech, language and cognitive capacities, and
(d) capacities to relate to people, events and objects.
Associated features include stereotyped motor patterns and erratic expression of emotions. Most children classified as autistic function at a mentally handicapped level of intellectual development.

(3) Behaviorally-Emotionally Handicapped. One who, after receiving specially designed educational support services and intervention strategies in the regular educational setting, still exhibits patterns of situationally inappropriate interpersonal or intrapersonal behavior of such frequency, duration, and intensity to disrupt the student's own learning process. Frequency, duration, and intensity are long standing patterns of behavior which occur regularly and often enough to consistently interfere with the student's own learning process. A behaviorial-emotional handicap is evidenced by one or more of the following characteristics which cannot be attributed primarily to physical, sensory, or intellectual deficits:
(a) inability to achieve adequate academic progress (not due to a learning disability);
(b) inability to maintain satisfactory interpersonal and/or intrapersonal relationships;

(c) inappropriate or immature types of behavior or feelings under normal conditions;
(d) a general pervasive mood of unhappiness or depression;
(e) a tendency to develop physical symptoms, pains or fears associated with personal or school problems.

The term does not include the socially maladjusted student unless it is determined that he/she is also behaviorally-emotionally handicapped.

(4) Deaf-Blind. Deaf-blind students have concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(5) Hearing Impaired. Hearing impaired children are those with hearing losses which are handicapping educationally and developmentally and who, with or without amplification, may require various instructional modifications and related services in order to make full use of school experiences. Hearing impaired is a generic term which includes all hearing losses ranging from mild to profound.

(6) Mentally Handicapped. Mentally handicapped refers to significantly subaverage general cognitive functioning and a reduced rate of learning. This condition exists concurrently with deficits in adaptive behavior, is manifested during the developmental period, and adversely affects the student's educational performance.

(7) Multihandicapped. Multihandicapped students have a pervasive primary handicap that is cognitive and/or behavioral in combination with one or more other handicaps (such as mentally handicapped-emotionally handicapped, mentally handicapped-blind, etc.), the combination of which causes such developmental and educational problems that the children cannot be accommodated in special programs that primarily serve one area of handicapping condition.

(8) Orthopedically Impaired. An orthopedically impaired child possesses a severe orthopedic impairment which adversely affects his/her educational performance. The term includes impairments caused by congenital abnormalities and impairments from other causes.

(9) Other Health Impaired. Other health impaired students have chronic or acute health problems which cause limited strength, vitality or alertness to such an extent that special educational services are necessary. The health problems may include heart conditions, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, genetic impairments or some other illness which may cause a student to have limited strength, vitality or alertness, adversely affecting educational performance.

(10) Pregnant School Girls. Pregnant students with special educational needs are those who, because of their pregnancy, require special education and/or related services other than that which can be provided through regular education services.

(11) Specific Learning Disabled. Specific learning disability is an inclusive term used to denote various processing disorders

presumed to be intrinsic to an individual (e.g. acquisition, organization, retrieval, or expression of information; effective problem-solving behaviors).

For the purpose of special education services, a student classified as learning disabled is one who, after receiving instructional intervention in the regular education setting, has a substantial discrepancy between ability and achievement. The disability is manifested by substantial difficulties in the acquisition and use of skills in listening comprehension, oral expression, written expression, reading, and/or mathematics. A learning disability may occur concomitantly with, but is not the primary result of, other handicapping conditions and/or environmental, cultural, and/or economic influences.

(12) Speech-Language Impaired. A pupil who has a speech-language impairment has a disorder in articulation, language, voice, and/or fluency. A speech-language impairment may range in severity from mild to severe. It may be developmental or acquired, and pupils may demonstrate one or any combination of the four parameters listed above. A speech-language impairment may result in a primary handicapping condition or it may be secondary to other handicapping conditions.

A communicative difference/dialect is a variation of a symbol system used by a group of individuals which reflects and is determined by shared regional, social or cultural/ethnic factors and should not be considered a disorder of speech or language. The components of speech-language impairment include:

(a) Articulation. An articulation disorder is an abnormal, nondevelopmental production of phonemes (speech sounds). Types of misarticulations include omissions, substitutions, and distortions.

(b) Language. A language disorder is the impairment of comprehension and/or production of an oral communication system. The disorder may involve the form of language (phonologic, morphologic, and syntactic systems), the content of language (semantic system), the function of language (pragmatic system), and/or any combination of the above.

(i) Form of Language

(I) Phonology is the sound system of a language and the linguistic rules that govern it.

(II) Morphology is the rule system that governs the structure of words and the elements of meaning used in their construction.

(III) Syntax is the linguistic rule governing the order and combination of words to form sentences, and the relationships among the elements within a sentence.

(ii) Content of Language
Semantics refers to the content or meaning of words and utterances.

(iii) Function of Language
Pragmatics refers to the social use of language and its appropriateness in a given situation.

(c) Voice. A voice disorder is an abnormal production of pitch (e.g., range, inflection, appropriateness), intensity

(loudness), resonation (e.g., excessive nasality), and quality (e.g., breathiness, hoarseness, and harshness).

(d) Fluency. A fluency disorder is a disruption in the normal, rhythmic flow of speech that interferes with communication. The disorder may include, but not be limited to, frequency of dysfluencies, duration of dysfluencies, struggle and avoidance characteristics, and type of dysfluencies (repetition--phrases, whole words, syllables, and phonemes; prolongations; and blocks).

(13) Visually Impaired

(a) Functionally blind children are those who have so little remaining vision that they must use Braille as their reading medium.

(b) Partially seeing children are those who have a loss of vision, but are able to use regular or large type as their reading medium. These will generally be children who have a visual acuity between 20/70 and 20/200 in the better eye after correction.

(c) Children who are legally blind are those who have a visual acuity of 20/200 or less in the better eye after correction or a peripheral field so contracted that the widest diameter subtends an arc no greater than 20 degrees.

B. Evaluations. Evaluations for determining eligibility for special educational services are defined as follows:

(1) Adaptive Behavior Evaluation. The adaptive behavior evaluation refers primarily to the effectiveness with which the individual generally meets the standards of personal independence and social responsibility expected of his/her age and cultural group. It has two major facets:

(a) the extent to which the individual is able to function independently, and

(b) the extent to which he/she meets satisfactorily the culturally-imposed demands of personal and social responsibility.

Evaluations of adaptive behavior look at the total environment of the child. Thus, effort is made to obtain such information from the parents or other appropriate persons in the child's home and community. An adaptive behavior evaluation may be part of the psychological evaluation. It may also be conducted by other professional personnel, such as social workers, counselors and others who are trained in the assessment of adaptive behavior and in the interpretation of this information.

(2) Audiological Evaluation. An audiological evaluation is an examination by a qualified audiologist to determine auditory acuity, auditory perception, and amplification needs for the purpose of planning education services. The evaluation shall include air conduction testing, bone conduction testing, speech discrimination testing, speech reception testing with amplification and without amplification, and impedence testing.

(3) Educational Evaluation. An educational evaluation is an evaluation of a child's educational functioning in relation to his/her current educational program. The results of this evaluation are expressed in terms of both the child's academic strengths and weaknesses. This evaluation should be comprehensive, using a

full range of available instrumentation and observations, including diagnostic tests and other appropriate formal and informal measurements. For a child whose handicap is one of speech-language impairment only, a detailed educational evaluation may not be necessary. Speech-language specialists should have information as to the student's grade placement and areas of academic strengths and weaknesses.

(4) Health Screening. Health screening includes but is not necessarily limited to vision screening, hearing screening, dental screening, review of health history, review of developmental milestones, assessment of physical growth and assessment of nutritional status. Health screening can be performed by a school nurse.

(5) Ophthalmological or Optometric Evaluation. An ophthalmological or optometric evaluation is an evaluation by an ophthalmologist or optometrist to determine visual acuity and function and whether or not amplification is needed.

(6) Otological Evaluation. An otological evaluation is an evaluation by a qualified otologist to determine the presence or absence of ear pathology and the need for medical treatment.

(7) Psychological Evaluation. A psychological evaluation refers to those diagnostic procedures utilized by a psychologist. For the purpose of children with special needs categories requiring a psychological evaluation for placement in special education programs, the evaluation of intellectual functioning is mandatory The psychological may also include, but not be limited to, the evaluations of educational performance, social and personal behavior, adaptive behavior and psychomotor development. Particular emphasis should be given to behavioral-emotional evaluations for emotionally handicapped children. Assessment of intellectual functioning shall be based upon the use of the most recent revisions of the Stanford-Binet Intelligence Scale, an appropriate Wechsler Intelligence Scale, or a test of equal validity and equivalent norms. Where these instruments are clearly inappropriate as standardized (e.g., for severely/profoundly mentally handicapped, deaf, etc.), the psychologist should use his/her professional judgement about the selection of instruments for assessing the intellectual functioning of the children. Social-personal behavior and academic performance shall be measured by test instruments and/or procedures deemed appropriate by the examiner. In categories requiring a psychological evaluation, a child shall not be placed, even temporarily, prior to this assessment. Psychological evaluations shall be performed by a qualified examiner. School psychologists employed by the public schools must be certified by the State Department of Public Instruction. Psychologists contracting with schools on a private basis must be licensed as psychological associates or practicing psychologists by the North Carolina Board of Examiners of Practicing Psychologists. When contracting with state agencies for psychological services, the local educational

agency's contract must be with the agency and not the individual psychologist.

(8) Psychomotor Evaluation. Psychomotor skills involve the interaction of the body and its perceptual systems which have as their focus four main areas:
(a) fine and gross motor skills,
(b) body image and laterality,
(c) time and space organization, and
(d) control of individual and social behavior.
Psychomotor evaluations may be obtained by formal instruments and observation of specified tasks. Persons who would be able to assess psychomotor skills are: psychologists, specially trained teachers of children with special needs including adaptive physical education teachers and occupational and physical therapists. In-depth evaluations are done by physical or occupational therapists. Psychomotor screening should be a prerequisite for an in-depth evaluation.

(9) Social/Developmental History. A social/developmental history documents normal and abnormal developmental events and includes a review of information developed during the screening process. The history is to be attained by a certified social worker, special educator, psychologist, counselor or another appropriate person.

(10) Speech-Language Evaluation. In speech-language evaluations, the following aspects of speech-language are evaluated: articulation, fluency, voice and language (form, content, and function). A speech-language evaluation is an evaluation by a speech-language specialist certified by the State Department of Public Instruction and/or licensed by the State of North Carolina.

(11) Vocational Evaluation. Vocational evaluation is a process involving an interdisciplinary team approach in assessing an individual's vocational potential and training and work placement needs.

C. Free Appropriate Public Education. As used in this part, the term "free appropriate public education" means special education and related services which:

(1) are provided at public expense, under public supervision and direction, and without charge.
(2) meet the standards of the state education agency.
(3) are provided in conformity with an individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant.

D. Individualized Education Program. As used in this Section, the term "individualized education program" means a written statement for a child with special needs that is developed and implemented pursuant to .1512 of these "Procedures."

E. Least Restrictive Environment. Least restrictive environment means that, to the maximum extent possible, children with special needs shall be educated with children who are not handicapped. Among all alternatives for placement within an educational system, children with special needs shall be placed where they can obtain the appropriate educational services which meet their individual educational needs as close to and as nearly like a regular

classroom setting as possible. Each local educational agency providing special education and related services must specify in the individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant, the extent to which the child with special needs will participate in regular education.

F. Local Educational Agencies. For purposes of this Section, the term "local educational agency" refers to the following:

(1) All city and county school administrative units as separate local educational agencies;

(2) Department of Human Resources as one local educational agency; All schools, hospitals and agencies providing educational programs and/or services will be considered schools or programs under this local educational agency;

(3) Department of Correction as one local educational agency; All prisons providing educational programs or services will be considered programs under this local educational agency.

G. Parent. The term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with this Section. The term does not include the state if the child is a ward of the state.

H. Program and Teacher Variations.

(1) Communication Development Program. The communication development program serves the general school population and is prevention-oriented providing strong speech and language models and sequenced curriculum activities emphasizing listening skills, cognitive and expressive competencies, understanding and protection of the hearing and speech mechanism and self-confidence to help children develop appropriate communicative behaviors in social, educational and cultural contexts. The role of the speech and language specialist includes planning, promotion, consultation and demonstration with professionals and supportive personnel.

(2) Communication Deviations Program. The communication deviations program serves individuals with mild developmental or nonmaturational problems in articulation, voice, fluency or language, as well as those with mild hearing loss requiring minimal aural rehabilitation procedures. The program provides services which include speech, language and hearing screening, and speech and language improvement. The speech and language specialist's role includes identification, diagnosis, organization, consultation and supervision of supportive personnel and occasionally a direct role in correction and follow-up. The deviations program may be conducted in regular classrooms, large groups, or in small groups.

(3) Communication Disorders Program. The communication disorders program serves children with handicapping disorders of communication. It includes comprehensive diagnostic and intensive individual and/or small group therapy utilizing modern research technology and diagnosis and program management, including direct scheduling, referral, counseling, direct therapy and dismissal. The speech and language specialist works with children on an individual basis or in small groups. Scheduling varies according to the pupil's needs.

(4) Crisis Teacher. A crisis or helping teacher is a teacher who is trained in remedial educational and behavioral management to provide direct immediate help to individual pupils when they are unable to cope with usual classroom demands. The crisis teacher must work closely with classroom teachers and support services and make referrals for diagnostic and intensive help.

(5) Diagnostic-Prescriptive Teacher. A diagnostic-prescriptive teacher is a resource teacher who provides consultation to regular teachers concerning children with special needs and/or gives direct services to children with special needs in order to insure successful instruction. They may assist with basic screening. The major function of the diagnostic-prescriptive teacher is to assist in the formal or informal diagnosis of the child's specific strengths and weaknesses and assist the regular teacher in developing and implementing a curricular prescription.

(6) Enrichment Teacher. An enrichment teacher is a resource teacher who meets children for in-depth, enrichment activities at least an hour per week. This teacher may be itinerant between schools or be stationed in one school only. This teacher usually works with academically gifted children.

(7) Regular Classroom Program. A regular classroom means a program where an identified student with special needs receives the majority of his/her educational program in a regular class and special education and related services for less than 21 percent of the school day. This may include exceptional children placed in:

(a) regular class with special education/related services provided within a regular class,

(b) regular class with instruction within the regular class and with special education/related services provided outside a regular class,

(c) regular class with special education provided in a resource room, or

(d) regular class with instruction within regular class and regular teacher receives consultation from special education teacher.

(8) Resource Class. The resource class is a class where an identified student with special needs receives his/her educational program in a resource room including exceptional children receiving special education/related services for between 21 percent and 60 percent of the school day. This may include children placed in:

(a) resource rooms with special education/related services provided within the resource room, or

(b) resource rooms with part-time instruction in a regular class.

(9) Resource Teacher. "Resource teacher" means a teacher who may work with the child daily and/or consult with the regular classroom teachers on individualizing instruction for a child with special needs. The child remains in the regular class most of the time.

(10) Separate Class. A separate class is a class where an identified student with special needs receives educational programs in a

separate class including exceptional children receiving special education/related services for more than 60 percent of the school day. This may include children placed in:

(a) self-contained special classes with part-time instruction in a regular class, or

(b) self-contained full-time special classes on a regular school campus.

I. Related Services. "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with special needs to benefit from special education, and includes speech pathology and audiology, psychological services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. The terms used in this definition are defined as follows:

(1) "Audiology" includes:

(a) identification of children with hearing loss;

(b) determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(c) provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation and speech conservation;

(d) creation and administration of programs for prevention of hearing loss;

(e) counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(f) determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

(5) "Occupational therapy" includes:

(a) improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(b) improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(c) preventing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) "Physical therapy" means services provided by a qualified physical therapist. Physical therapy is a health professional concerned with prevention of physical disability and rehabilitation of individuals with handicapping conditions resulting from

prenatal causes, birth, illness or injury. The purpose of physical therapy is to develop or restore neuromuscular and/or sensorimotor functions, control postural deviations to minimize disabilities and to develop and to maintain maximal performance levels within the individual's capabilities. The physical therapist is employed for the purpose of: screening, evaluation, treatment, consultation, inservice education for school personnel, inservice education of community and state health agencies and personnel and total program planning for exceptional children.

(8) "Psychological services" include:
  (a) administering psychological and educational tests, and other assessment results;
  (b) interpreting assessment results;
  (c) obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
  (d) consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
  (e) planning and managing a program of psychological services including psychological counseling for children and parents;
  (f) referring children and families to community agencies and services when appropriate;
  (g) screening and early identification of children with special needs; and
  (h) developing strategies for the prevention of learning and behavior problems.

(9) "Recreation" includes
  (a) assessment of leisure functions;
  (b) therapeutic recreation services;
  (c) recreation programs in schools and community agencies; and
  (d) leisure education.

(10) "School health services" means services provided by a qualified school nurse or other qualified person.

(11) "Social work services in schools" include:
  (a) preparing a social or developmental history on a handicapped child;
  (b) group and individual counseling with the child and family;
  (c) working with those problems in a child's living situation (home, school and community) that affect the child's adjustment in school; and
  (d) mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

(12) "Speech pathology" includes:
  (a) identification of children with speech or language disorders;
  (b) diagnosis and appraisal of specific speech or language disorders;
  (c) referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

(d) provisions of speech-language services for the habilitation or prevention of communicative disorders; and
(e) counseling and guidance of parents, children and teachers regarding speech-language disorders.

(13) "Transportation" includes:
(a) travel to and from school and between schools;
(b) travel in and around school buildings; and
(c) specialized equipment (such as special or adapted buses, lifts and ramps), if required to provide special transportation for a handicapped child.

J. Screening. Screening consists of first-step assessment procedures aimed at selecting students who may have special needs. Two separate components of screening may be identified:

(1) Mass screening or sweep screening is the selection, from the preschool or school-age population, of services, which may include special education, related services, special health services, or sensory aids in order to achieve full learning potential. These individuals will need follow-up to identify specific academic and behavioral needs by additional evaluation processes. Mass screening may be accomplished through the administration of such programs as:
(a) school-wide achievement testing.
(b) school-wide health and sensory testing,
(c) early childhood and kindergarten testing, and
(d) class-wide surveys and observations.

(2) Individual screening is the identification, from a population of preschool or school-aged children referred from mass screening or other sources, of specific academic or behavioral problem areas which need further in-depth evaluation. Individual screening should more accurately select those students who need further consideration for special school services, which may include special education and related services.

K. Special Education. As used in this Section, the term "special education" means specifically designed instruction, at no cost to the parent, to meet the unique needs of the exceptional child, including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions. The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of an exceptional child, and is considered "special education" rather than a "related service" under State standards. The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents to meet the unique needs of a handicapped child.

History Note: Statutory Authority G. S. 115C-108 through 110; 115C-113;
Eff. October 1, 1978;
Amended Eff. November 1, 1984; September 28, 1981;
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.1502 IDENTIFICATION, SCREENING, EVALUATION AND PLACEMENT

A. Local educational agencies including local school administrative

units and Department of Human Resources and Department of Correction agencies providing special education to children with special needs are responsible for insuring that all children with special needs within their jurisdiction are identified, located and evaluated, including children in private agencies within their jurisdiction ages birth through twenty-one.

B. Local educational agencies and private schools shall implement procedures for identification, screening, evaluation and placement of children with special needs. These procedures shall be in keeping with Chapter 1293 of 1973 Session Laws as amended by Chapter 151 and 563 of 1975 Session Laws and Subchapter 13, Article 9, Chapter 115-C, Chapter 423, 1981 Session Laws and Education of All Handicapped Children Act, P.L. 94-142. The local procedures shall be adopted by the governing body of each local educational agency and private school and shall include the procedures described in this rule.

C. Variations from these procedures may occur when sufficient evidence exists to indicate that children can be properly identified and placed within the intent of the procedures. A written plan detailing the variations with reasons listed shall be submitted to the Director, Division for Exceptional Children, for approval prior to their implementation.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113;
Eff. July 15, 1979

.1503 OBSERVATION

If a teacher recognizes a need for assistance with a child, the child should be observed in his/her class or present setting by at least one of the following: the principal, the chairperson of programs for exceptional children, a teacher of exceptional children or appropriate support services personnel. This step may be eliminated if it is determined that sufficient documentation exists that the child is having definite problems with his/her educational programs(s). If a child is observed, a written description of his/her behavior and academic skills should be completed.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113;
Eff. July 15, 1979

.1504 INITIAL CONFERENCE PRIOR TO SCHOOL-BASED COMMITTEE REFERRAL

The teacher, the local chairperson of programs for exceptional children or his/her designee and the principal may confer to determine whether the regular program can be adapted to meet the needs of a child, whether transfer to another teacher is advisable, or whether the need for special education service(s) or placement appears to be indicated. If is is felt that a special program or service may be needed, the parents shall be notified, and a referral shall be made in writing to the school-based committee. The observation report and initial conference report should be presented to the school-based committee.

History Note: Statutory Authority G. S. 115C-106(b): 115-113;
Eff. July 15, 1979

.1505 REFERRAL

When a teacher or other involved person recognizes that a child's educational needs are not being met, he/she will provide in writing the reason for referral, addressing the specific presenting problems and the child's current strengths and weaknesses. This referral will be given to the principal of the school, the child's teacher, or the superintendent or other appointed official of the local educational agency. All newly identified children with special needs ages five through twenty who are diagnosed or evaluated by personnel under the Department of Human Resources shall be referred to the city or county school administrative unit of their residence for local educational agency involvement in placement.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113;
Eff. July 15, 1979
Amended Eff. July 1, 1986

.1506 SCHOOL-BASED COMMITTEE

A. Overall Function. The school-based committee should provide a team framework for evaluating data and recommending the most appropriate placement for children referred for special education services. It shall cause to be provided an evaluation by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability. The school-based committee is responsible for receiving referrals, involving parents in the planning process, obtaining parental permission for assessment, initiating screening and evaluation procedures, evaluating information, seeing that an individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant, is developed, and is reevaluated annually.

B. Composition. Members of the school-based committee shall be selected from the following:

(1) principal (or designee) as chairperson;
(2) teacher referring the child;
(3) director, programs for exceptional children (or designee);
(4) teacher of exceptional children;
(5) psychologists;
(6) social worker;
(7) guidance counselor;
(8) speech-language specialist;
(9) physician or school nurse;
(10) physical therapist;
(11) occupational therapists;
(12) physical education teacher;
(13) recreation specialist;
(14) referring agency personnel;
(15) parent(s).

When the school-based committee is considering the appropriate placement for a child with special needs who is fourteen years of age or older, a vocational education teacher and/or a vocational rehabilitation counselor should be included on the committee if possible.

At least one member of the school-based committee should be of the same race and sex as the child being referred.

. Responsibilities of School-Based Committees. The school-based committee shall:

(1) receive referral information for students suspected of needing special education services;

(2) ensure that within 30 calendar days after an initial referral is made, the student's parent or guardian is sent a written notice describing the evaluation procedure which will be followed to diagnose the student's educational needs and requesting written consent for the evaluation. All communication with the student's parent or guardian shall be in the native language or dominant mode of communication of the parent or guardian.

(3) initiate screening and assessment of students referred to it;

(4) ensure that a student receives a diagnosis and evaluation appropriate to meet his/her educational needs within 30 calendar days after sending written notice to the parent or guardian;

(5) review and interpret the results of the diagnosis and evaluation data in conjunction with appropriate evaluation personnel. If the evaluators cannot be present at the school-based committee meeting, their written reports are to be presented;

(6) ensure that within 15 calendar days after the diagnosis and evaluation are completed, the student's parent(s) or guardian(s) is sent or given a written summary of the results and findings along with proposals for meeting the student's educational needs;

(7) ensure that within 20 calendar days after the diagnosis and evaluation are completed a conference is scheduled with the child's parent(s) or guardian(s) and the school-based committee or a representative of the school-based committee who is competent to interpret the report of the diagnosis and evaluation. In no event shall the conference be held later than 30 calendar days after the day of scheduling. This conference may be waived by the parent;

(8) ensure that information from all the appropriate evaluations and sources is documented and considered.

(9) forward to the administrative placement committee a recommendation of the individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant and the placement which would best meet the educational needs of the student and the information which was considered in formulating the placement recommendation. Appropriate placement alternatives will be discussed with the parent.

(10) ensure that written consent for placement in a program for special needs children is obtained from the parent or guardian and that the parents have been involved in the development of the individualized education program for the handicapped, group educational program for the academically gifted or written education program for the pregnant;

(11) ensure that notice is given to parents which meets the requirements of Section .1517 prior to the placement or denial of placement.

(12) ensure that the student is placed in the appropriate special program;

(13) ensure that the teacher(s) of the child receives the individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant and pertinent information necessary for working with the student;

(14) ensure that twelve months after placement and at least annually thereafter, the progress of each child placed in a special program is evaluated on the basis of previously expected benefits, and a decision is made regarding an updated individualized education program for the handicapped, group educational program for the academically gifted or written educational program for the pregnant and continuation of the student in the program.

D. Change In Placement/Exit Criteria. When a school-based committee has documented evidence to show that a pupil no longer needs the special program or service in which he/she is enrolled or that another placement would be more beneficial, the committee shall make a recommendation to the administrative placement committee. After the administrative placement committee has made a decision, the parent(s) or guardian(s) is notified pursuant to the procedures set forth in .1517 of this Section. If the parent(s) or guardian(s) objects to the recommended placement, he/she may follow the appeal procedures as outlined in .1517 of this Section. An appropriate special educator should work with the receiving teacher(s) to assist in developing an appropriate program and services for the child.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113;
Eff. October 1, 1978;
Amended Eff. November 1, 1984; September 28, 1981,
September 30, 1980; July 15, 1979

.1507 ADMINISTRATIVE PLACEMENT COMMITTEE

A. Function. The administrative placement committee will make all final decisions regarding classification of students as special needs and placement of students in programs for exceptional children.

B. Responsibilities. The administrative placement committee is responsible for:

(1) receiving and reviewing information collected and considered by the school-based committee in formulating the recommendation regarding classification of a student as special needs and placement of a student in a special program;

(2) reviewing the recommendation of the school-based committee regarding classification of a student as special needs and placement of a student in a special program;

(3) ensuring compliance with due process procedures concerning the identification and placement of a student in a program for exceptional children. Due process procedures must be provided in writing to the parents.

(4) reviewing referrals of students from other agencies or of students who are not being presently served in the local educational agency and making the final decision concerning classification of a student as special needs and placement. For a child not presently served in the local educational agency, the committee might wish to refer the child to a school-based committee for the development of an individualized education program for the handicapped, group education program for

the academically gifted or written educational program for the pregnant. If a child is screened or evaluated by the staff of the Department of Human Resources, this information should be presented to the administrative unit where the student resides for the determination of appropriate classification as a student with special needs and placement.

(5) conferring with appropriate Department of Human Resources staff for the development of an individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant and determination of appropriate placement if it is determined by the administrative placement committee in a city or county school administrative unit that a child should receive a free appropriate public education in a program operated by the Department of Human Resources. If a child is released from a program operated by the Department of Correction or the Department of Human Resources, staff from the program shall confer with the administrative placement committee in the school administrative unit for development of an individualized education program for the handicapped, group education program for the academically gifted and written educational program for the pregnant and determination of appropriate placement. The individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant will follow the child from one placement to another. The individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant may be challenged under due process provisions;

(6) making financial arrangements with other local educational agencies, other public agencies or private schools;

(7) If the placement decision is for placement outside the local educational agency, the committee must see that an appropriate individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant is developed in conjunction with the school or program where the child is being place.

(8) If the administrative placement committee determines that the individualized education program for the handicapped, group education program for the academically gifted or written education program for the pregnant is not adequate and does not define an appropriate education for the child, then the administrative placement committee can either reconvene the committee or ask the parent to join the administrative placement committee and actively change the individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant. The parent must be informed that he or she has all rights to participate in changing the individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant and the right to a hearing. After the change, a new consent form must be signed by the parent, if it is for initial placement.

C. Composition. One member of the administrative placement committee must be someone from the central office of the local educational agency who has been designated by the superintendent as eligible to commit financial or other resources. Other members of the administrative placement committee should be selected from the following:

(1) Exceptional Children Program Administrator;
(2) Chairperson of the appropriate school-based committee;
(3) Superintendent, or designee;
(4) General supervisor;
(5) School psychologist;
(6) Other appropriate personnel;
(7) If a child is referred by another agency, an appropriate representative from that agency shall provide input for appropriate placement.

The administrative placement committee should have at least one member of the same race as the student being considered for special education placement.

D. Committee Alternative. The school-based committee, individualized education program committee, group education program committee, written educational program committee, multidisciplinary team and administrative placement committee may be combined into one committee or a combination of committees to meet the needs of the particular local educational agency. To combine committees, local educational agencies must submit the procedures to the Division for Exceptional Children for written approval. In combining the committees, local educational agencies must meet the requirements in Section .1512. If the category is specific learning disabilities, the unit must also meet the requirements of Section .1509(6).

E. Alternatives for Annual Review. The school-based committee may exercise either option below for annual reviews:

(1) conduct an annual review of the placement of each identified handicapped and gifted student and forward to the administrative placement committee only those recommendations for changes in placement and/or classification of students and any data used in making the recommendations. In addition, the school-based committee shall submit to the administrative placement committee a list of those students for whom no change in placement is recommended. The school-based committee shall certify or verify that a thorough review of the record of each student has been conducted. The administrative placement committee shall have the option of requesting any additional information on any of the students.

(2) convene an IEP/GEP committee to review each child's present goals, objectives and progress. Parents shall be invited to participate in the meeting. Group meetings may be held for the GEP; individual meetings must be held for each IEP. The IEP committee shall document the goals attained by each child and develop a new IEP. Each child's strengths and needs must be summarized. The GEP shall be reviewed, and determination shall be made as to whether all academically gifted students attained the goals. A new GEP shall be developed and individual or other GEP's developed for students, based on needs. A list of students shall be attached to each GEP. The IEP/GEP committee shall provide written documentation of the placement decision

reached by the committee and the options considered and rejected with reasons for each child. The IEP/GEP committee shall sign and date the new IEP/GEP. The signatures will verify that the committee has conducted a review of the child's placement and progress. The date of this meeting shall be within a year of the beginning date of each child's IEP/GEP. The newly developed IEP/GEP must indicate the date services will begin for the child.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113;
Eff. October 1, 1978;
Amended Eff. September 28, 1981; September 30, 1980;
July 15, 1979.

.1508 COMPREHENSIVE SCREENING AND EVALUATION

Screening and assessment are the responsibility of the school-based committee and professionals qualified to administer and determine the results of certain technical (clinical) tests which are designed to screen or assess a pupil's strengths and weaknesses in specific areas of learning and/or behavior. Such professionals might be available within the city and the county school administrative units or from other appropriate agencies (i.e., mental health centers, public health departments and developmental evaluation clinics).

(1) Parental Permission. When initial screening and/or evaluation reouire the administration of instruments, interviews, or other procedures used selectively with an individual child (not given to everyone in the child's class, grade or school), written parental permission must be obtained.
Within 30 calendar days of the referral, the local educational agency shall send a written notice to the parents or guardians. Refer to Section .1517 for contents of notice to parents.

(2) Screening. Screening should be done to determine if the child is eligible for further consideration for special education services. Appropriate screening may eliminate unnecessary referrals for psychologicals and other in-depth assessment. The child's existing school records, including work samples, shall be collected and analyzed. Other screening information could include physical health information, educational data, and informal social behavior data.

(3) Evaluation. The evaluation of an exceptional child must be multi-factored and multi-disciplinary in order to provide a comprehensive view of the child from the perspective of the school, home, and community. In addition to ability and achievement data, information on physical condition, socio-cultural background, and adaptive behavior in the home and school should be gathered, considered and weight should be given to each.

(4) If the parent(s) or guardian(s) consents, the local educational agency shall provide or cause to be provided an appropriate evaluation within 30 calendar days after sending the notice. If the parent does not consent, the local educational agency may obtain a due process hearing on the failure of the parent to consent, pursuant to .1517 of this Section.

(5) Types of Evaluation. Types of evaluations for determining eligibility for special educational services include, but are not limited to, the following:
(a) educational evaluation,
(b) psychological evaluation,
(c) adaptive behavior evaluation,
(d) psychomotor evaluation,
(e) vision and hearing screening and evaluation,
(f) medical screening and evaluation,
(g) speech-language development evaluation,
(h) audiological evaluation,
(i) otological evaluation,
(j) ophthalmological or optometric evaluation,
(k) vocational evaluation.

(6) Validated Instruments. Tests and other evaluation materials must have been validated for the specific purpose for which they were used.

(7) Racially and Culturally Unbiased Evaluations. All tests and evaluational materials and procedures utilized for the purposes of evaluation and placement of children with special needs will be selected and administered so as not to be racially or culturally discriminatory. Such materials and procedures will be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so. No single procedure shall be the sole criterion for determining an appropriate education program for a child. Test results should accurately reflect the child's aptitude, achievement level, or whatever other factor the test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills, except when such skills are the factors which the test purports to measure.

History Note: Statutory Authority G. S. 115C-113;
Eff. July 15, 1979
Amended Eff. September 28, 1981; September 30, 1980.

.1509 SPECIAL IDENTIFICATION PROCEDURES

Special identification procedures appropriate to particular types of special needs children include, but are not limited to, the following:

(1) Academically Gifted.

(a) Local educational agencies shall develop a local screening procedure in order to establish a pool of students who are possibly qualified for and in need of differentiated instruction. Initial screening of the pool will determine students for whom formal referrals will be made. Suggested screening procedures may include checklists/behavioral scales of characteristics of the gifted; scores obtained on system-wide standardized tests of intelligence and/or achievement; teacher/parent/peer/self nominations; scores

obtained on screening instruments; and a listing of students from high, middle, and low income levels who have demonstrated outstanding ability in the classroom, school or community.

(b) Identification shall be based on an assessment of intelligence or aptitude test scores, standardized achievement test scores and student performance based on grades, demonstrated skills or products. Students earning 98 or more points on IQ/aptitude and achievement percentiles or on IQ/aptitude and achievement percentiles plus scholastic performance are eligible to be considered by the School-Based and Administrative Placement Committees for the academically gifted program.

(c) Criteria.

(i) IQ/Aptitude (50 point maximum): Individual or group tests may be used. A list of approved tests is available in the Division for Exceptional Children. Scores are to be converted to percentiles, and each percentile has a point value.

(ii) Achievement (50 point maximum): Composite or total reading/total math subtests may be used. Scores are to be converted to percentiles and each percentile has a point value.

(iii) Scholastic Performance (10 point maximum): For students earning fewer than 98 points on IQ/aptitude and achievement test scores, scholastic performance shall be considered. A maximum of 10 points shall be added to points earned on IQ/aptitude and achievement based on the accompanying scale for overall academic average, specific subject area grades or documentation of outstanding skills or abilities (e.g., writing portfolios, science projects, etc.).

(iv)

Percentile	IQ	Points Achievement	Grades	Points
99	50	50	A	10
98	49	49	A-/B+	9
97	48	48	B	8
96	47	47	B-/C+	7
95	46	46	C	6
94	45	45		
93	44	44		
92	43	43		
91	42	42		
90	41	41		
89	40	40		
88	39	39		
87	38	38		
86	37	37		
85	36	36		
	etc.			

(d) Special Consideration/Further Testing. Standardized assessment instruments do not always adequately control for the lack of environmental or cultural opportunities to learn or for the presence of physical, emotional, or learning handicaps. If the presence of these factors or discrepancies between test scores and classroom performance are judged to have affected the reliability of identification data, further standardized testing shall be completed and the scores used in determining eligibility.

(2) Behaviorally-Emotionally Handicapped.

(a) Screening Procedures. The following screening information shall be collected and considered in order to make decisions regarding further educational interventions and/or evaluations:

(i) dated and signed documented evidence of at least two interventions attempted in order to make behavioral and academic achievements possible within the regular educational setting; and the effect of each on the student's behavior. Those interventions should be designed in consultation with other staff members and may include but not be limited to changes in the student's class schedule, curriculum, teachers, instructional techniques, and interventions by student services personnel; and community interventions;

(ii) systematic observation(s) by at least one independent observer which specifically records the incidence and describes the nature of the behavior(s) leading to a referral;

(iii) documented and dated evidence that conferences or attempts to conference with the parent and/or guardian concerning the student's specific problems have been conducted;

(iv) vision screening;

(v) hearing screening;

(vi) records review.

(b) After reviewing screening data, a screening committee determines that a referral for evaluation is necessary if:

(i) specific interventions implemented were not effective;

(ii) vision and hearing appear to be within limits;

(iii) it is determined that the documented maladaptive behavior appears to be long standing or of such frequency or intensity so as to interfere with the student's own learning process.

(c) Evaluation Procedures. The evaluation of behaviorally-emotionally handicapped shall include the following areas:

(i) Behavioral-Emotional Evaluation. The evaluation of behavioral-emotional functioning shall be conducted by a certified or licensed psychologist to document maladaptive behaviors or deficits in coping skills and emotional functioning. Behavioral-emotional evaluation includes information about the unique personal attributes of the student and describes any distinctive patterns of behavior which characterize the

student's personal feelings, attitudes, moods, perceptions, thought processes, and significant personality traits. The evaluation shall include:

(A) interviews with the student, appropriate staff and others;

(B) checklists or rating scales; and

(C) screening data and any other observation data.

(ii) Educational Evaluation. A comprehensive evaluation conducted by a certified school psychologist, special educator, or other trained professional shall include an assessment of:

(A) the learning environment including curriculum and task demands;

(B) academic strengths and weaknesses including written and oral language and information from individualized achievement assessment;

(C) present levels of academic functioning;

(D) vocational needs (secondary students).

(iii) Cognitive Evaluation. A cognitive functioning evaluation shall be conducted by a certified or licensed psychologist. This evaluation includes interviews with the student, learning history, and behavioral observations with special consideration given to evaluation of disorders of thought, memory, judgment, and/or time-place orientation as appropriate. An individual intellectual evaluation shall be given when academic or learning deficits or giftedness is suspected.

(iv) Social/Developmental History.

(d) Eligibility Criteria. In order to determine eligibility for behaviorally/emotionally handicapped programs, the following are required:

(i) Evidence that the student, after receiving supportive regular educational assistance, including specific techniques suggested by the screening committee, still exhibits a behavioral/emotional disorder consistent with the definition.

(ii) Evidence that the disability is not the result of social maladjustment; a physical, sensory, or intellectual deficit; or lack of appropriate instruction or management of behavior.

(iii) Evidence that the student's own learning process is consistently and significantly disrupted.

(iv) Evidence that the patterns of behavior occur in more than one setting over an extended period of time.

(v) Evidence of a marked deviance from the student's peer group.

(3) Hearing Impaired. Children may be identified as needing audiological and otological evaluations through mass hearing screening efforts and/or teacher referral. The audiological evaluation shall include air conduction testing, bone conduction testing, speech reception testing with and without amplification, and impedance testing to determine the type and extent of any hearing loss that may be present.

(4) Mentally Handicapped. The assessment process will provide information to indicate whether the child needs a program for the mildly retarded (educable mentally handicapped), moderately retarded (trainable mentally handicapped), or severely/profoundly mentally handicapped. The intelligence quotient range for placement in programs for the educable mentally handicapped is 50-69 plus or minus one standard error of measurement. The intelligence quotient range for placement in programs for the trainable mentally handicapped is 30-49 plus or minus one standard error of measurement.
Children scoring on the borderline between the educable mentally handicapped and trainable mentally handicapped ranges should be provided services in the least restrictive appropriate environment. Children scoring below 30 on an individual psychological test may be enrolled in a class with the trainable mentally handicapped if their needs can be met appropriately in such a setting. Severely or profoundly mentally handicapped pupils who manifest severe learning and/or behavior problems, and who require extensive structure in learning situations if their educational needs are to be met, may need to be placed in a separate program.

(5) Multihandicapped and Severely/Profoundly Mentally Handicapped. Multihandicapped and severely/profoundly mentally handicapped children have a wide variety of handicapping conditions and their associated characteristics require diverse and unique evaluation procedures. Comprehensive evaluation data must include:
   (a) medical evaluation with information on precautions, medications and recommendations for physical and occupational therapy;
   (b) education evaluations that address self-help, cognitive, social and, where appropriate, prevocational skills;
   (c) psychological evaluation that includes intellectual functioning, personality, social and adaptive behavior;
   (d) psychomotor evaluation giving information on the neurological and physiological dysfunctions; and
   (e) communication evaluation with information on expressive and receptive speech and language skills, with particular attention given to the need for augmentative communication systems.

(6) Pregnant School Girls. Diagnosis of a pregnant school girl shall be by the family's physician or by the Health Department. The identification of the special educational needs of pregnant school girls shall be accomplished by multiple means. These methods shall include, but are not limited to, written recommendations from a licensed practicing physician, school counselor, social worker, teacher, nurse practitioner, parent, the student or significant others. Such recommendations shall be reviewed by the school-based/administrative placement committee which shall make the final decision on educational placement and programming.

(7) Specific Learning Disabled.

(a) Eligibility Criteria. The following criteria shall all be met in identifying a student as learning disabled and in need of special education:

(i) after intervention strategies have been implemented in regular education or other programs, the student still exhibits learning difficulties.

(ii) achievement measured in age standard score units is 15 or more points below intellectual functioning.

(iii) the disability is not primarily the result of sensory deficits; mental handicap; behavioral/emotional handicap; or environmental, cultural, and/or economic influences. If a student's learning problems can be attributed to any of these exclusionary factors, then the primary disability is not a learning disability.

(iv) the student exhibits characteristics of learning disabilities consistent with the definition.

(b) Screening Procedures. The following screening information shall be collected and considered in order to make decisions regarding further educational interventions and/or evaluations:

(i) dated documentation of conferences or attempts to conference with parents or guardians concerning the student's specific problems.

(ii) dated and signed documented evidence of at least two interventions attempted within the regular education setting and the effect of each. Those interventions should be designed in consultation with other staff members and may include, but not be limited to, changes in the student's class schedule, curriculum, teachers, instructional techniques, and interventions by student services personnel.

(iii) behavioral observation(s) by an appropriate third-party observer and/or other evidence, such as work samples, which describe and document the student's learning problem.

(iv) information concerning the student's:

(A) educational history,

(B) medical history,

(C) school attendance record,

(D) performance in relation to peers (e.g., group or individual screening intelligence and achievement tests, criterion referenced tests and work samples),

(E) social functioning, and

(F) environmental and cultural status.

(v) vision screening for near and far vision acuity.

(vi) hearing screening.

(c) Evaluation Procedures. The evaluation of a student to determine eligibility for a learning disability program involves four steps: determine the student's current intellectual functioning, determine the student's current level of academic functioning, determine the amount of

discrepancy between current intellectual functioning and academic functioning and document that the discrepancy is the result of a learning disability including descriptions of learner characteristics and behavior.

(i) Psychological Evaluation. The student's cognitive/intellectual functioning must be assessed by using the recent revision of an appropriate Wechsler Intelligence Scale, the Stanford-Binet Intelligence Scale, or a test of equal validity and equivalent norms. This evaluation shall be conducted by a certified school psychologist or a licensed psychologist. Variability or "scatter" within intelligence measures is expected and normal. It is inappropriate to select the higher of subscale, subtest, factor or other scores for use as an estimate of intellectual functioning without considerable supporting evidence including other assessment results. When there are verbal/performance IQ discrepancies of at least 20 points on the Wechsler Scale, the higher scale IQ may be used to determine the achievement-ability discrepancy providing there is evidence that the higher score accurately reflects the student's intellectual functioning. Because of the importance of the intellectual assessment to the identification process, group intelligence tests, unjustified prorated scores or extrapolated scores and abbreviated forms shall not be used.

(ii) Educational Evaluation. Evaluation of academic functioning for learning disabilities has two primary purposes:

(A) to define the level of functioning in order to determine a substantial discrepancy and

(B) to identify learner and environmental characteristics that can be used to document that the discrepancy results from a learning disability and to plan intervention strategies and program development.

Achievement difficulties may be identified in the areas of listening comprehension, oral expression, written expression, reading, reasoning and/or mathematics. Individually administered, standardized, norm-referenced achievement tests are required to determine a discrepancy. Other procedures, such as curriculum-based assessment, review of written classwork, classwork observations of performance and expectations, criterion-referenced instruments, and informal tests, should also be used to document specific disabilities. Comprehensive assessment of academic functioning should be conducted by professionals specifically trained to administer and interpret norm-referenced, criterion-referenced and other diagnostic measures of achievement. Such professionals might include school psychologists,

specially trained teachers or counselors. Achievement information obtained from more than one source must be integrated for a comprehensive view of academic functioning.

(iii) Discrepancy Determination. Subtract achievement age standard score from the IQ score, assuming both measures have a mean of 100 and standard deviation of 15. If the test does not have a mean of 100 and standard deviation of 15, statistical procedures shall be implemented. Determine if the discrepancy is 15 points or more between achievement and ability. In cases where the multidisciplinary team determines that assessment measures did not accurately reflect the discrepancy between academic functioning and intellectual functioning, appropriate documentation must be used to verify the discrepancy. If norm-referenced tests are not available for a particular area of achievement or the multidisciplinary team determines that the assessment measures did not accurately reflect the discrepancy between achievement and ability, the team shall state in writing the assessment procedures used, the assessment results, the criteria applied to judge the importance of any difference between expected and current achievement, and whether a substantial discrepancy is present that is not correctable without the provision of special education.

(iv) Documentation of Specific Learning Disability. This documentation will involve a systematic procedure for comparing information gathered in the evaluation process to identify behavioral and academic patterns of strengths and weaknesses (e.g., standardized tests, informal tests, observations, interviews, work samples, measures of adaptive and/or affective behaviors).

(d) Multidisciplinary Team. The multidisciplinary team shall provide a team framework for evaluating a child suspected of having a learning disability. The multidisciplinary team must consist of, but not be limited to:

(i) the student's regular teacher

(ii) if the child does not have a regular teacher, then a regular classroom teacher qualified to teach a child of his/her age.

(iii) for a child less than school age, an individual qualified by the State Department of Public Instruction to teach a child of his or her age.

(iv) a person certified or trained in the area of learning disabilities.

(v) at least one person qualified by the State Department of Public Instruction to conduct individual diagnostic examinations of children, such as a:

(A) school psychologist

(B) speech-language specialist
(C) remedial reading teacher, or
(D) specific learning disability teacher

(e) The major responsibilities of the multidisciplinary team are:

(i) to collect or assist in compiling all data relevant to the determination of eligibility.

(ii) to appoint one member of the team (other than the student's regular teacher) to observe the student's performance in the regular classroom setting and note relevant behaviors.

(iii) to review all available data, including the observation data.

(iv) to make a collective group decision as to whether or not the student meets the eligibility criteria, based on all required data.

(v) to write a report addressing all of the following areas:

(A) relevant behaviors noted during observation and the relationship of that behavior to the student's academic functioning

(B) educationally relevant medical findings, if any

(C) whether there is a significant discrepancy between current achievement and ability, which is not correctable without special educational and related services

(D) the basis of making the discrepancy determination

(E) the determination of the team that the significant discrepancy is not primarily the result of:

(I) other handicapping condition

(II) environmental, cultural and/or economic influences and/or

(III) lack of appropriate school experiences commensurate with age and ability

(F) whether the student has a specific learning disability.

(vi) to have each team member to certify by signing the written report with individuals providing statements of concurrence or dissent from the decision. In case of disagreement among team members, the majority will constitute the decision. If the team composition is an even number and the decision is split, a person knowledgeable in the area of learning disability as specified by the Exceptional Children Program Administrator should be added to the team. A team member in disagreement with the team decision must submit a separate statement presenting his/her conclusion.

(vii) to recommend an educational program to meet the unique instructional needs of the student and to provide recommendations to be used in the development of an individualized education program.

(viii) to provide a team framework for evaluating a child for continuation in or exit from the specific learning disability program at the third year reevaluation.

(8) Speech-Language Impaired. Children may be identified as needing speech-language evaluations through mass screening efforts and/or teacher referral. Children determined through screening or referral to need evaluations shall be assessed in the areas of articulation, language (form, content and function), voice and fluency. It is on the basis of such an evaluation that the determination as to the type and intensity of services is to be made.

(a) Articulation. For a student to be considered for placement in an articulation therapy program, he/she must demonstrate one to three consistent sound substitutions, omissions and/or distortions of phonemes which should have been developed within one year of his/her chronological/ cognitive level.

(b) Language. A battery of two diagnostic measures is recommended to assess comprehension and production aspects of language. Assessment instruments chosen may include normed tests, criterion referenced tests, and/or a language sample. Scores should be computed in standard deviations (SD), language quotients (LQ), percentiles and/or stanine scores when possible. For a student to be considered for placement in a language therapy program, appropriate diagnostic tests must indicate a language disorder of at least one standard deviation below the mean, a language quotient of 85, a percentile of 22 and/or a stanine of three. When evaluating an individual with language problems, a comparison should be made between the individual's language age score (as determined by the diagnostic battery) and the chronological or cognitive level. Placement decisions for individuals who are eligible for programs for the mentally handicapped should be based on a comparison of language age (LA) to mental age (MA) or cognitive potential scores, obtained from standardized measures of intelligence.

(c) Voice. For a student to be considered for placement in a voice therapy program, he/she must demonstrate consistent deviations in vocal production that are inappropriate for chronological/mental age, sex, and ability.

(d) Fluency. For a student to be considered for placement in a fluency therapy program, he/she must demonstrate nonfluent speech behavior characterized by repetitions/prolongations as noted on a regular basis.

History Note: Statutory Authority G. S. 115C-106(b): 115C-113;
Eff. October 1, 1978;
Amended Eff. January 1, 1985; November 1, 1983;
September 28, 1981; September 30, 1980; July 15, 1979.

.1510 REQUIRED AND RECOMMENDED SCREENING AND EVALUATION

Specific screening and evaluation procedures are required for the various categories of exceptionality and for children in hospital or home programs. Some evaluations are required for a particular handicap and others are highly recommended. Required and recommended screening and evaluations for each area of exceptionality are as follows:

(1) Academically Gifted
  (a) required screening and evaluation before placement:
    (i) intelligence quotient or aptitude percentiles
    (ii) educational evaluation (achievement test total or subtest scores)
    (iii) student performance based on grades or demonstrated skills/products, as needed.
  (b) recommended screening and evaluation before placement: further standardized testing when environmental, cultural, or handicapping conditions are judged to have affected the reliability of identification data.

(2) Autistic
  (a) required screening and evaluation before placement:
    (i) review of early history,
    (ii) educational evaluation,
    (iii) psychological evaluation,
    (iv) speech-language screening, followed by an evaluation when appropriate,
    (v) adaptive behavior evaluation,
    (vi) hearing screening,
    (vii) vision screening.
  (b) recommended screening and evaluation before placement:
    (i) medical/neurological evaluation,
    (ii) audiological evaluation.

(3) Behaviorally-Emotionally Handicapped
  (a) required screening and evaluation before placement:
    (i) behavioral-emotional evaluation in Section .1509,
    (ii) educational evaluation in Section .1509,
    (iii) cognitive evaluation in Section .1509,
    (iv) social/developmental history in Section .1509.
    (v) two interventions in regular setting (for initial placement only; see Section .1509 (2) (a))
    (vi) observation by an independent observer (for initial placement only; see Section .1509 (2) (a))
    (vii) conferences with parents (for initial placement only; see Section .1509 (2) (a))
    (viii) vision screening
    (ix) hearing screening
    (x) records review (for initial placement only)
  (b) recommended screening and evaluation before placement:
    (i) medical evaluation,
    (ii) psychomotor screening followed by an in-depth evaluation when appropriate,
    (iii) speech-language evaluation,

(4) Hearing Impaired
  (a) required screening and evaluation before placement:
    (i) educational evaluation,

(ii) speech-language evaluation,
(iii) audiological evaluation,
(iv) otological evaluation,
(v) vision screening.

(b) recommended screening and evaluation before placement:
(i) health screening,
(ii) psychological evaluation,
(iii) adaptive behavior evaluation,
(iv) ophthalmological or optometric evaluation,
(v) social/developmental history.

(5) Educable Mentally Handicapped
(a) required screening and evaluation before placement:
(i) health screening, followed by a medical evaluation when appropriate,
(ii) psychological evaluation,
(iii) educational evaluation,
(iv) adaptive behavior evaluation,
(v) psychomotor screening followed by an in-depth evaluation when appropriate,
(vi) speech-language screening followed by speech-language evaluation when appropriate,
(vii) hearing screening,
(viii) vision screening which measures far and near acuity.

(b) recommended screening and evaluation before placement,
(i) audiological evaluation for initial placement, followed by routine audiometric screening when reevaluated,
(ii) vocational evaluation for students age 14 or older,
(iii) social/developmental history for initial placement followed by annual updating.

(6) Trainable Mentally Handicapped
(a) required screening and evaluation before placement:
(i) medical evaluation,
(ii) psychological evaluation,
(iii) educational evaluation,
(iv) adaptive behavior evaluation,
(v) psychomotor screening followed by an in-depth evaluation when appropriate,
(vi) speech-language screening, followed by speech-language evaluation when appropriate,
(vii) hearing screening,
(viii) vision screening which measures far and near acuity.

(b) recommended screening and evaluation before placement:
(i) audiological evaluation for initial placement, followed by routine audiometric screening when reevaluated,
(ii) vocational evaluation for students age 14 or older,
(iii) social/developmental history for initial placement followed by annual updating.

(7) Severely/Profoundly Mentally Handicapped
(a) required screening and evaluation before placement:
(i) medical evaluation,
(ii) psychological evaluation,
(iii) educational evaluation,
(iv) adaptive behavior evaluation,

(v) psychomotor screening followed by an in-depth evaluation when appropriate,
(vi) speech-language screening, followed by speech-language evaluation when appropriate,
(vii) hearing screening,
(viii) vision screening which measures far and near acuity.

(8) Multihandicapped
(a) required screening and evaluation before placement:
(i) medical evaluation,
(ii) psychological evaluation,
(iii) educational evaluation,
(iv) adaptive behavior evaluation,
(v) psychomotor screening followed by an in-depth evaluation when appropriate,
(vi) speech-language evaluation,
(vii) hearing screening,
(viii) vision screening;
(b) recommended screening and evaluation before placement:
(i) audiological evaluation,
(ii) ophthalmological or optometric evaluation.

(9) Other Health Impaired. Required screening and evaluation before placement:
(a) medical evaluation,
(b) educational evaluation.

(10) Orthopedically Impaired
(a) required screening and evaluation before placement:
(i) medical evaluation,
(ii) educational evaluation,
(iii) psychomotor screening followed by an in-depth evaluation when appropriate,
(iv) hearing screening,
(v) vision screening.
(b) recommended screening and evaluation before placement:
(i) adaptive behavior evaluation,
(ii) physical therapy evaluation,
(iii) speech-language
(iv) occupational therapy evaluation.

(11) Pregnant School Girls. Required before placement:
(a) medical diagnosis,
(b) written recommendation verifying need for special education.

(12) Specific Learning Disabled
(a) required screening and evaluation before placement:
(i) psychological evaluation,
(ii) educational evaluation,
(iii) hearing screening,
(iv) vision screening which measures far and near acuity,
(v) conferences with parents (initial placement only; see Section .1509 (7) (b))
(vi) two interventions in regular setting (initial placement only; see Section .1509 (7) (b))
(vii) third party observation
(ix) information concerning the student's educational and medical history, school attendance record, performance in

relation to peers, social functioning and environment and cultural status (initial placement only; see Section .1509 (7) (b))

(b) recommended screening and evaluation before placement:
(i) health screening,
(ii) medical evaluation,
(iii) psychomotor screening followed by an in-depth evaluation when appropriate,
(iv) speech-language evaluation.

(13) Speech-Language Impaired
(a) required screening and evaluation before placement:
(i) educational evaluation,
(ii) speech and language screening with valid instruments using developmental or normative data to determine age appropriate performance for articulation and receptive and expressive language skills,
(iii) speech and/or language diagnostic evaluation administered to assess performance in those areas in which the student failed to demonstrate appropriate performance on screening test,
(iv) hearing screening
(b) recommended screening and evaluation before placement:
(i) health screening,
(ii) psychological evaluation,
(iii) vision screening.

(14) Visually Impaired
(a) required screening and evaluation before placement:
(i) hearing screening
(ii) ophthalmological or optometric evaluation;
(b) recommended screening and evaluation before placement:
(i) medical evaluation,
(ii) psychological evaluation,
(iii) educational evaluation,
(iv) adaptive behavior evaluation,
(v) speech-language evaluation,
(vi) audiological evaluation.

History Note: Statutory Authority G. S. 115C-113;
Eff. October 1, 1978;
Amended Eff. January 1, 1985; September 28, 1981; September 30, 1980; July 15, 1979.

.1511 REEVALUATION

A. Appropriate in-depth reevaluation of exceptional children must be completed at least every three years in order to determine the appropriateness of current educational status of students and to determine whether or not a student continues in or exits from a special education program. The reevaluation shall include the types of screening and evaluations in Section .1510 required prior to the initial placement. If prior to the initial placement, evaluation data used by the multidisciplinary team is older than the

thirty day period between the time of consent for evaluation and the evaluation (assessment), the timeline for reevaluation shall begin with the date of the earliest evaluation data.

B. Parental approval is not required prior to the reevaluation. The parent(s) must be notified in writing that the child is being reevaluated and the notice must meet the requirements of Section .1517. If the parent objects, the due process procedures set forth in .1517 of this Section may be followed. If a child's performance/behavior warrants reevaluation before the three-year period has expired, a referral for reevaluation should be made. Students who upon reevaluation no longer qualify for placement in a special education program are not to remain in the program beyond the present grading period.

History Note: Statutory Authority G. S. 115C-113
Eff. July 15, 1979;
Amended Eff. July 1, 1986; November 1, 1984;
September 28, 1981.

.1512 INDIVIDUALIZED EDUCATION PROGRAM FOR THE HANDICAPPED, GROUP EDUCATION PROGRAM FOR THE ACADEMICALLY GIFTED AND EDUCATIONAL PROGRAM FOR THE PREGNANT

A. Each handicapped child's educational placement must be based on his or her individualized education program, and each local educational agency shall develop and implement an individualized education program for each handicapped child. The requirements in this Section are not required for children in hospital or home programs who have not been appropriately identified as children with special needs under one or more of the categories in Section .1501(a). The State Department of Public Instruction shall monitor the effectiveness of these programs.

B. Composition of Individualized Education Program Committee. The entire school-based committee may or may not be involved; however, the following individuals must be involved in the development and writing of the individualized education program:

(1) A representative of the local educational agency other than the child's teacher who shall be qualified to provide, or supervise the provision of, specifically designed instruction to meet the unique needs of the child;
(2) The child's teacher;
(3) The parent(s) or guardian(s) of the child;
(4) The child, when appropriate;
(5) Other individuals at the discretion of the agency such as professionals from other agencies or private sector who have been involved in evaluation or treatment of the child;
(6) Special consideration should be given to including the student's regular classroom teacher and a teacher of exceptional children on each individualized education program committee;
(7) For a handicapped child who has been evaluated for the first time, the local educational agency shall have:
    (a) a member of the evaluation team participate in the Individualized Education Program meeting, or
    (b) a representative of the local educational agency, the child's teacher, or some other person present at the

meeting who is knowledgeable about the evaluation procedures used with the child and who is familiar with the results of the evaluation.

C. Content of the Individualized Education Program. The individualized education program for each child must include:

(1) a statement of the child's present levels of educational performance;
(2) a statement of annual goals;
(3) a statement of short-term instructional objectives;
(4) a statement of specific education and related services to be provided to the child;
(5) a description of the extent to which the child will participate in regular education programs and a description of the program to be provided;
(6) the projected dates for initiation of services and the anticipated duration of services;
(7) objective criteria, evaluation procedures, and schedule for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

D. Maintenance of the Individualized Education Programs. The local educational agency shall maintain records of the individualized education program for each handicapped child. The individualized education program is considered a confidential record.

E. Department of Human Resources and Department of Correction. In the facilities and programs of the Department of Human Resources and the Department of Correction, the individualized education program shall, in addition to .1512(c), be planned in collaboration with those other individuals responsible for the design of the total treatment and/or habilitation plans; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent. For purposes of these programs, requirements for parent(s) or guardian(s) involvement are limited to only educational matters in the identification, placement and special education programming of handicapped children.

F. Private School Placement.

(1) An individualized education program is to be developed by the local educational agency for any child who is enrolled in a parochial or other private school, but who receives special education or related services from a local educational agency.
(2) Before a local educational agency places a handicapped child in or refers a child to a private school or facility, the local educational agency will initiate and conduct with a representative of the private school in attendance an individualized education program meeting before referring the child to a private school or facility.
(3) After a child is placed in a private school, any meeting to review or revise the individualized education program may be initiated and conducted by the private school at the discretion of the public agency.
(4) If the private school initiates and conducts an individualized education program meeting, the public agency must assure that the parents and an agency representative are involved in any decision about the individualized education program and agree to any proposed change in the program before the changes are implemented.

(5) If a handicapped child is enrolled in a parochial or private school and receives special education or a related service from a public agency, the public agency shall insure that a representative of the private school attends each individualized education program meeting or use other methods to insure participation such as individual or conference phone call.

(6) Even if a private school implements a student's individualized education program, responsibility for compliance with this part remains with the local educational agency.

G. Timelines.

(1) An individualized education program must be in effect before special education and related services are provided to the child.

(2) For a handicapped child who is receiving special education, the individualized education program must be revised as often as determined necessary but at a minimum annually. As the school year begins, the individualized education program shall be reviewed by the teacher or teachers responsible for implementation so that the program will allow for changes needed.

(3) For a handicapped child not receiving special education at the present time, the individualized education program must be developed within 30 days of a determination that the child is to receive special education programs or services.

(4) An individualized education program must be implemented as soon as possible following the individualized education program meeting.

H. Parent Participation.

(1) Steps should be taken to insure that one or both of the parents or guardians of the handicapped child are present at each meeting or are afforded the opportunity to participate, including
scheduling the meeting early enough and at a mutually agreed upon time and place.

(2) The notice from the local educational agency informing the parent(s) of the individualized education program meeting must contain the purpose of the meeting, time, location of the meeting, and who will be in attendance.

(3) If neither parent can attend, the local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(4) A meeting may be conducted without a parent in attendance if the parent(s)/guardian(s) cannot or will not participate. In this case the local educational agency must have a record of its attempts to arrange a mutually agreed upon time and place, such as:

(a) detailed records of telephone calls made or attempted and the result of those calls,

(b) copies of correspondence sent to the parent(s)/guardian(s) and any responses received.

(c) detailed records of visits made to the parent(s)/guardian(s) home or place of employment and the results of those visits.

(5) The local educational agency shall take whatever action is necessary to insure that the parent understands the proceedings

at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

I. Notification and Consent for Placement. The following information must be supplied to the parent(s) or guardian(s) during a conference or by mail:

(1) a copy of the individualized education program if requested;
(2) a description of the rights of the parent(s), including the right to review data, to challenge the data, and to provide additional data that could have some effect on the placement program, and/or services of the child;
(3) information concerning their right to an independent educational evaluation, at public expense, if they disagree with the evaluation obtained by the local educational agency. A list of other agencies providing free evaluations should be provided. The local educational agency may initiate a hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has a right to an independent evaluation but not at public expense. The results of an independent evaluation obtained at the parents' own expense must be considered by the local educational agency in any decision about the placement of a program and/or services for the child;
(4) information concerning the right to appeal the decision and a copy of the appeals procedures;
(5) information must be in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

J. Review of the Individualized Education Program.

(1) the individualized education program shall be reviewed at least annually,
(2) the student's program must be reviewed and necessary changes made in the individualized education program,
(3) the student's parent(s) or guardian(s) must be invited to participate in the review.
(4) recommendations for any change in the student's placement must be made to the administrative placement committee,
(5) the student's parent(s) or guardian(s) must be notified of any change in placement, and due process procedures must be followed.

K. Liability. An agency, teacher or other person shall not be held liable if the child does not reach the growth projected in the annual goals and objectives in the individualized education program but must make a "good faith effort" to assist the child in achieving the objectives and goals.

L. Group Education Programs for the Academically Gifted. Each local educational agency shall prepare Group Education Programs (GEPs) for academically gifted student. The Group Education Program shall be used to describe an instructional program that is appropriately differentiated for a group of two or more academically gifted students who share similar academic characteristics and/or program needs. For students whose special needs are not adequately addressed by the Group Education Program, an individualized component shall be considered. The Group Education Program shall be in place at the time services are initiated, and shall be reviewed at least annually to aid in

recommendations for the next year's placement and program. The Group Education Program shall include:

(1) The differentiated program and services:
  (a) a brief narrative describing the program content;
  (b) annual goals;
  (c) methods and procedures for determining that the goals have been met;
  (d) additional needs, if any, of a student(s) that are not already addressed and a description of further modifications needed.

(2) Documentation of opportunities for parents to participate in the Group Education Program process. Because the Group Education Program describes the instructional program for academically gifted students, the teacher responsible for implementation shall be responsible for Group Education Program development. Group or individual meetings to promote parental involvement in Group Education Program development may be held. Student participation, if appropriate, is recommended.

(3) Attached to the Group Education Program should be the following:
  (a) a list of the students' names;
  (b) the name of the school;
  (c) the program type, grade level, or subject area class (Examples: Elementary Enrichment; 11th Grade English--Advanced);
  (d) school year; and
  (e) name of instructor.

M. Educational Program for the Pregnant. Local school administrative units shall develop a written program to meet the special educational needs of pregnant school girls.

History Note: Statutory Authority G. S. 115C-113;
Eff. October 1, 1978
Amended Eff. November 1, 1983, September 28, 1981;
September 30, 1980,
July 15, 1979.

.1514 CONFIDENTIALITY AND ACCESS TO RECORDS

A. Formulation of Policy and Procedures. Each local educational agency shall formulate and adopt a policy of:

(1) informing parents of students or eligible students of their rights,

(2) permitting parents of students or eligible students to inspect and review the education records of the student, including at least:
  (a) a statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;
  (b) with an understanding that it may not deny access to an education record, a description of the circumstances in which the agency feels it has a legitimate cause to deny a request for a copy of such records;

(c) a schedule of fees for copies; and
(d) a listing of the types and locations of education records maintained by the educational agency and the titles and addresses of the officials responsible for those records.

(3) not disclosing personally identifiable information from the education records of a student without prior written consent of the parent of the student or the eligible student. The policy shall include, at least:
(a) a statement of whether the educational agency will disclose personally identifiable information from the education records of a student and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agencies consider to be a legitimate educational interest," and
(b) a specification of the personally identifiable information to be designated as directory information.

(4) maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained, and permitting a parent or an eligible student to inspect that record.

(5) providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under the due process hearing procedures in Section .1517, and permitting the parent of a student or an eligible student to place a statement in the education records of the student in the event that the parent or eligible student does not agree with the results of the hearing.

The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

B. Annual Notification of Rights.

(1) Each local educational agency shall give parents of students in attendance or eligible students in attendance annual notice by such means as are reasonably likely to inform them of the following:
(a) Their rights concerning confidentiality and access to records. The notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and
(b) The right to file complaints concerning alleged failures by the educational agency to comply with confidentiality requirements.

(2) Agencies shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

C. Access Rights.

(1) A parent, legal guardian, or eligible student has the right to read, inspect, or copy the student's education records maintained by the local educational agency and to have a representative of the parent inspect and review the records.
Upon request, parents shall be entitled to have these records fully explained, interpreted and analyzed for them by the staff of the agency. Such requests shall be honored within a

reasonable period of time, but in no case more than 45 days after the request has been made. Eligible student is defined as one who has reached the age of majority, 18 years, unless he/she has been declared incompetent by the court. The term "education records" does not include personal notes of teachers or professionals working with the child. The agency should comply with a request to inspect the records prior to meeting regarding an individualized education program or hearing. These records relate to the identification, evaluation, and placement of the child including the records on free appropriate public education rights when the public agency is unable to supply an appropriate education and seeks to purchase appropriate services from a private or public provider.

(2) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(3) If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(4) A participating educational agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A participating agency may not charge a fee to search for or to retrieve information under this part.

D. Prior Consent for Disclosure Required.

(1) An educational agency shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student to a third party, other than directory information, except as provided in (e) of this section.

(2) Whenever written consent is required, an educational agency may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(3) The written consent required by paragraph (d) (1) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:
   (a) a specification of the records to be disclosed,
   (b) the purpose or purposes of the disclosure, and
   (c) the party or class of parties to whom the disclosure may be made.

(4) When a disclosure is made pursuant to paragraph (1) of this section. The educational agency shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

E. Parental Consent.

(1) Parental Consent is required prior to release of education records, except:

(a) school officials within the local educational agency who have legitimate educational interests,

(b) officials of another school or local educational agency in which the student intends to enroll or obtain services,

(c) certain authorized representatives of the state and federal government who are determining eligibility of the child for aid as provided under Public Law 94-142,

(d) when required by a judicial order or any lawfully issued subpoena upon condition that parents/students are notified by the local educational agency of all such orders or subpoenas in advance of the compliance.

(2) All other persons may gain access to a student's record only with the specific written consent of the parent(s) or guardian(s) or student of majority age.

(3) Recipients of student records should be cautioned that student information may not be released to third parties without the consent of the parent/legal guardian.

(4) When a parent refuses to provide consent and the agency feels that the record must be shared with another party to insure appropriate education of the child, the agency must use the hearing procedures in order to compel consent which could be ordered by the hearing officer.

(5) The participating agency must: keep a record for parties obtaining access to education records (name of party, date of access, and purpose of access); provide parents on request a list of types and locations of education records; maintain, for public inspection, a current listing of names and positions of those employees within the agency who may have access to personally identifiable information.

(6) Information from a student's record should be furnished without the parent's or student's consent when required by a judicial order or any lawfully issued subpoena upon condition that parents/students are notified by the local educational agency of all such orders or subpoenas in advance of the compliance.

F. Amendment of Records at Parent's Request.

(1) A parent who believes that data which is collected and maintained is inaccurate, misleading or in violation of the privacy or other rights of the child may request the participating agency which maintains the data to make appropriate amendments to the data.

(2) The participating agency shall decide whether to amend the data in accordance with the request within a reasonable period of time of receipt of the request.

(3) If the agency decides to refuse to amend the data in accordance with the request, it shall so inform the parent of the refusal and advise the parent of the right to a hearing under Section .1517.

G. Right to a Hearing.

(1) A parent, legal guardian or eligible student has a right to a hearing to challenge the validity of the contents of the child's record. They have the right to add to records, data and

information a written explanation or clarifications thereof and to cause the expunction of incorrect, outdated, misleading, or irrelevant entries. On the agency's refusal to delete such entries, the parents may request a hearing pursuant to Section 99 of the Family Educational Rights and Privacy Act.

(2) If, as a result of the hearing, the agency decides that the data is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the data accordingly and so inform the parent in writing.

(3) If, as a result of the hearing, the agency decides that the data is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the data and setting forth any reasons for disagreeing with the decision of the agency.

(4) Any statements or explanations placed in the records of the child under the guidelines of the above paragraph shall be maintained by the agency as long as the record or contested portion thereof is maintained by the agency; and if the records of the child or the contested portion thereof is disclosed by the agency to any party, the explanation shall also be disclosed to the party.

(5) If the hearing results in the entries not being deleted and the parents still disagree, then they may request a due process hearing pursuant to Section .1517 within 30 days after the hearing.

H. Safeguards.

(1) Each agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(2) One official in each agency shall assume responsibility for insuring the confidentiality of any personally identifiable information. This official may assign personnel in each school to ensure confidentiality.

(3) All persons collecting or using confidential information must receive training or information regarding State policies and procedures.

(4) Each agency shall maintain for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information.

I. Destruction of Information.

(1) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. The agency should inform the parent that the records may be destroyed but at the parent's request a copy of the record would be sent.

(2) The information must be destroyed at the request of the parents. however, a permanent record of a student's name, address and phone number, his or her grades, attendance records, classes attended, grade level completed, and year completed may be maintained without time limitation.

(3) Parents should be informed, prior to destruction, that the records may be needed by the child or the parent for social

security benefits or other purposes. If the parent still requests that the information be destroyed, the records are to be destroyed, retaining only information in (2) above.

J. Children's Rights. A student who is eighteen (18) years or older has the same rights as his parents or guardian previously had with the exception of psychiatric or treatment records which may be withheld. Consent may be given for a doctor of his/her choice to have access to the records and interpret the records to the student.

History Notes: Statutory authority G.S. 115C-114
Eff. July 15, 1979;
Amended Eff. November 1, 1984; September 28, 1981;
September 30, 1980

.1515 CONTINUUM OF PROGRAMS AND SERVICES -- LEAST RESTRICTIVE ENVIRONMENT: CHILDREN WITH SPECIAL NEEDS

A. To the maximum extent possible, children with special educational needs shall be educated in regular class settings. Each child with special needs is to participate with children who are not children with special needs in services and activities to the maximum extent appropriate to the needs of the child in both non-academic and extracurricular services including meals, recess period, counseling services, recreational activities, special interest groups or clubs sponsored by the local educational agency. Each child with special needs is to be placed as close as possible to his/her home. Unless the individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant requires some other arrangement, the child is to be educated in the school which he/she would attend if not handicapped, academically gifted or pregnant. When the regular class environment does not prove satisfactory in meeting the needs of the children, consultant or supportive services, remedial or advanced instruction and/or special instructional materials should be provided prior to removing them from the regular classroom. Special classes, separate schools or removal of children requiring special education from the regular educational environment shall occur only when the needs of the children are such that education in regular classes, even with the use of supplemental aids and services, cannot be accomplished satisfactorily.

B. Each local educational agency shall provide a facility(s) that will enable each student with special needs to have his/her individual educational needs met. No identified student with special needs shall, because the facilities are inaccessible to or unusable by the student, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that is needed to meet his/her special educational needs.

C. Each local educational agency shall explore available local resources and determine whether the needed services are being offered by an existing public or private agency.

When a specified special education or related service is being offered by a local, public or private source, the local educational agency shall negotiate for the purchase of that service or shall

present full consideration of alternatives and the recommendations to the State Board.

A new program for special education or related services shall be developed with the approval of the Board only when:

(1) that service is not being provided by existing public or private resources, or

(2) the service cannot be purchased from existing providers.

Local educational agencies may expand an existing program or services without Board approval.

D. In order that a child's needs can be met, a number of options shall be made available for the delivery of programs and services. The principal determinants in selecting the program or service for each child shall be goals of the child's individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant. In providing services to a child with special educational needs, the first factor should be the degree to which the child will profit from such an arrangement rather than administrative considerations. In selecting the least restrictive environment for the child, the local educational agency shall give consideration to any potentially harmful effect on the child and quality of service. The principal determinants of the number of children served in each program will be the age of the children, the nature and severity of their handicapping characteristics or advanced intellectual status, and the degree of intervention necessary to meet the individual needs. When serving children with special needs in regular classes, consideration should be given to the pupil-teacher ratio to allow for maximum benefits to regular and special students.

E. The following is a list which describes the continuum of programs and services available to children with special needs. Specific program variations and percentages of time are indicated in Section .1501.

(1) Regular Classroom. Many children with special needs will be educated in the regular classroom full-time. The teacher will individualize the program to meet their needs. The teacher may seek consultative services from resource persons as needed.

(2) Regular Classroom Program with Supportive Services. At this level of the continuum, children remain with their regular teacher for most of their academic instruction. However, supportive personnel may work with the child in the regular classroom or may have him/her leave the regular class to go to another setting for service. The teacher will individualize the program to meet the educational needs of the children.

(3) Resource Class. This type of service occurs every day for a minimum of one hour or one class period, but may cover most of the day except for those periods of time during which the child is returned to regular classes for programs such as creative arts, physical education or activity periods so as to give him/her opportunities to interact with his/her peers. Some classes may be departmentalized by subject areas. Others such as language arts and social studies may be arranged in blocks of time.

(4) Separate Class. Some children have educational needs which cannot be met in any of the previously described program alternatives. Their needs require a major modification of their curriculum or a major modification in approach and methodology.

Some of these children may be returned to a less restrictive alternative whenever the educational goals for the child in this program have been met. The classes are located in a school building where classes for regular students are being held to assure integration between non-handicapped and handicapped peers.

(5) Separate School Facility. A child shall be placed in a special day school/separate school facility only when his/her needs cannot be met in a regular school facility. A clear educational advantage for this arrangement must be documented prior to the placement of a child in this program.

(6) Public/Private Residential Facility. Residential facilities provide educational diagnosis and treatment/education to children who cannot be provided for in a less restrictive environment.

(7) Hospital/Home-based Services. Any child who is expected to be confined for four weeks or longer to a hospital or home for treatment or for a period of convalescence is eligible for this program. Any child who is disabled to the degree that it is impossible or medically inadvisable for him/her to attend public school even with the provision of special classes and transportation is eligible for hospital/home-based services. The child needing home-based services should be expected by competent medical authority to be away from the classroom for a minimum of four weeks, and the medical statement should set forth the nature and extent of the handicap, the physical or psychological limitations under which the child can operate successfully, and the anticipated length of time he/she is expected to be incapacitated. Children eligible for hospital/home-based services are to be given instruction based upon their individual needs from three to five hours per week unless prohibited for medical reasons. Other health impaired students and other identified children with special needs requiring hospital/home-based services shall have their special needs for hospital/home-based services designated in an individualized educational program for the handicapped, group education program for the academically gifted or written educational program for the pregnant and are not required to be absent four weeks or longer before receiving services.

F. Continuum of Communication Programs. Speech, language and hearing services may appear at any level of the continuum and offer program or service alternatives. A continuum of program and service models for children with speech, language and hearing impairments includes a communication development program, a communication deviations program and a communication disorders program.

History Note: Statutory Authority G. S. 115-110;
Eff. July 15, 1979;
Amended Eff. September 28, 1981.

.1516 MAXIMUM CLASS SIZE: PUPIL-TEACHER RATIO

Local educational agencies must assure that all levels of the continuum of programs and services as defined in section .1515 (E) are available, considered and utilized for all categories of children with special needs; in addition, the maximum class size in the settings below shall not be exceeded. Deviations may be made only with the prior written approval of the Division for Exceptional Children upon request by a local educational agency. Local educational agencies are encouraged to lower the maximum class sizes, if needed, to meet the needs of their particular students.

(1) Academically Gifted
  (a) regular class and supportive services--resource, enrichment, diagnostic-prescriptive: Up to 15 pupils per class period; up to 75 per day, or maximum of 175 pupils per week--1 teacher;
  (b) resource class-departmentalized-block: Up to 25 pupils per class period or up to 100 per day--1 teacher
  (c) separate class--self-contained: Up to 26 pupils--1 teacher.

(2) Autistic. separate class--self-contained:
  (a) up to 6 pupils--1 teacher, 1 assistant;
  (b) up to 9 pupils--1 teacher, 2 assistants.

(3) Behaviorally-Emotionally Handicapped
  (a) regular class and supportive services--resource, enrichment, diagnostic-prescriptive, consultant, crisis teacher: Up to 20 pupils per week--1 teacher;
  (b) resource class--departmentalized-block: Up to 6 pupils per class period--1 teacher: up to 8 pupils per class period--1 teacher, 1 assistant, up to 16 pupils per week--1 teacher, 1 assistant;
  (c) separate class--self-contained: 8 pupils--1 teacher, 1 assistant.

(4) Hearing Impaired.
  (a) regular class and supportive services--resource, enrichment, diagnostic-prescriptive, consultant: Up to 20 pupils per week--1 teacher;
  (b) resource class--departmentalized-block: Up to 10 per half day block--1 teacher; up to 20 pupils per day--1 teacher;
  (c) separate class--self contained
    (i) preschool/primary--up to 7 pupils--1 teacher, 1 assistant;
    (ii) elementary--up to 7 pupils--1 teacher, 1 assistant;
    (iii) secondary--up to 9 pupils--1 teacher, 1 assistant;
    (iv) severely handicapped--up to 4 pupils--1 teacher, 1 assistant in residential programs.

(5) Educable Mentally Handicapped
  (a) regular class and supportive services--resource, enrichment, diagnostic-prescriptive, consultant: Up to 35 pupils per week--1 teacher;
  (b) resource class--departmentalized-block

(i) preschool/primary--up to 12 pupils per class period;
(ii) elementary--up to 12 pupils per class period or 40 per day--1 teacher;
(iii) secondary--up to 16 pupils per class period or 40 per day--1 teacher;

(c) separate class--self contained
(i) preschool/primary--up to 12 pupils--1 teacher;
(ii) elementary--up to 12 pupils--1 teacher;
(iii) secondary--up to 16 pupils--1 teacher.

(6) Trainable Mentally Handicapped. Separate class--self-contained:
(a) up to 6 pupils--1 teacher,
(b) 7-12 pupils--1 teacher, 1 assistant;
(c) 13-16 pupils--1 teacher, 2 assistants.

(7) Severely/Profoundly Mentally Handicapped. Separate class--self-contained:
(a) up to 6 pupils--1 teacher, 1 assistant;
(b) 7-12 pupils--1 teacher, 2 assistants.

(8) Multihandicapped. Separate class--self-contained:
(a) up to 6 pupils--1 teacher, 1 assistant;
(b) 7-12 pupils--1 teacher, 2 assistants.

(9) Orthopedically Impaired
(a) regular class and supportive services--resource, enrichment, diagnostic-prescriptive, consultant; Up to 15 pupils per week--1 teacher;
(b) resource class--departmentalized-block:
(c) separate class--self-contained:
Up to 12 pupils--1 teacher, 1 assistant.

(10) Specific Learning Disabled
(a) regular class and supportive services--resource, enrichment, diagnostic-prescriptive, consultant; Up to 35 pupils per week--1 teacher if direct services; up to 40 pupils per week if indirect consultant services only;
(b) resource class--departmentalized-block: Up to 8 pupils per class period or 25 per day--1 teacher;
(c) separate class self--contained: Up to 12 pupils--1 teacher.

(11) Speech-Language Impaired
(a) There are no maximum or minimum caseloads. Caseload requirements must be flexible enough to provide for appropriate services in direct accord with diagnosed pupil needs. Consideration should be given to types of severity of pupils' problems; nature and level of services required by pupils to allow them to progress at optimum learning rates in accomplishing specific objectives; and ages, intellectual abilities and emotional behaviors of pupils to be served.
(b) Separate and resource class for children with language disorders: Up to 12 pupils--1 teacher, 1 assistant.

(12) Visually Impaired
(a) regular class and supportive services-resource, enrichment, diagnostic-prescriptive, consultant: Up to 35 pupils per week--1 teacher

(b) resource class--departmentalized block: Up to 8 pupils per class period or 25 per day--1 teacher;
(c) separate class--self-contained;
(i) blind--up to 8 pupils--1 teacher
(ii) partially sighted--up to 10 pupils--1 teacher
(iii) blind-severely handicapped--up to 4 pupils--1 teacher, 1 assistant in residential programs.

History Note: Statutory Authority G. S. 115C-110;
Eff. October 1, 1978;
Amended Eff. September 28, 1981, September 30, 1980;
July 15, 1979.

.1517 DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

A. As used in this rule

(1) "Consent" means that:

(a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(2) "Evaluation" means procedures used in accordance with Section .1502 to determine whether a child has special needs and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade or class.

B. The parents of a child with special needs shall be afforded, in accordance with the procedures in Section .1514, an opportunity to inspect, review and copy all the child's education records with respect to the identification, evaluation and educational placement of the child. Records of the Department of Correction which are confidential for purposes of security and custody management, and records of the Department of Human Resources which relate to the child's treatment and which are confidential under the regulations of the department, are not education records and are not available for parental inspection and review.

C. An independent educational evaluation is available as follows:

(1) The parents of a child with special needs have the right under this paragraph to obtain an independent educational evaluation of the child, subject to subparagraphs (4) through (7) of this paragraph.

(2) Each local educational agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this rule:

(a) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the local educational agency responsible for the education of the child in question.

(b) "Public expense" means that the local educational agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with 34 CFR 300.301.

(4) Parent right to evaluation at public expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the local educational agency. However, the local educational agency may initiate a hearing under this rule to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(5) Parent initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(a) must be considered by the local educational agency in any decision made with respect to the provision of a free appropriate public education to the child; and

(b) may be presented as evidence at a hearing under this rule regarding that child.

(6) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(7) Agency criteria. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the local educational agency uses when it initiates an evaluation.

D. Prior notice; written consent.

(1) Notice. Written notice which meets the requirements of paragraph (E) of this rule must be given to the parents of a child with special needs a reasonable time before the local educational agency:

(a) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(b) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

For purposes of this paragraph, a suspension or expulsion of a child with special needs for a period of more than ten days during the school year for behavior caused by the child's special needs shall be deemed to be a change of educational placement.

(2) Consent.
(a) Parental consent must be obtained before:
(i) conducting a preplacement evaluation; and
(ii) initial placement of a child with special needs in a program providing special education and related services.
(b) Consent may not be required as a condition of any other benefit to the parent or child.
(c) Consent is not required prior to reevaluation to determine if the child remains eligible for special education and related services, but prior notice is required before such evaluations.

(3) Procedures where parent refuses consent. When a parent refuses consent as required by part (A) of subparagraph (2) of this paragraph, the local educational agency may initiate an impartial due process hearing under paragraph (f) of this rule. If the hearing officer upholds the local educational agency, the local educational agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights of administrative appeal and judicial review.

E. Content of notice.
(1) The notice under paragraph (D) of this rule must include:
(a) a full explanation of all the procedural safeguards available to the parents under this rule which shall include impartial due process hearing rights (administrative review), surrogate rights, when appropriate, opportunity to examine records, independent educational evaluation, protection in evaluation procedures, least restrictive environment, and confidentiality;
(b) a description of the action proposed or refused by the local educational agency, and explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;
(c) a description of each evaluation procedure, test, record or report the local educational agency uses as a basis for the proposal or refusal;
(d) a description of any other factors which are relevant to the agency's proposal or refusal;
(e) a statement advising the parent, guardian, or surrogate parent of the right to review the proposed decision;
(f) a statement offering the parent, guardian, or surrogate parent the opportunity for mediation; and
(g) a copy of House Bill 364 (ratified in the 1987 session of the General Assembly) and G.S. 150B-23 through 37 or an explanation of the rights afforded by these statutes. These statutes indicate to whom the parent or guardian should make the request for an administrative review (hearing) and the appropriate procedures to follow.

(2) The notice must be:
(a) written in language understandable to the general public;

(b) provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so, and
(c) hand-delivered to the parent or sent to the parent by certified or registered mail, return receipt requested.

(3) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:
(a) that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
(b) that the parent understands the content of the notice, and
(c) that there is written evidence that the requirements of this subparagraph have been met.

(4) The local educational agency must inform the parent, guardian or surrogate parent of any free or low-cost legal and other relevant services available in the area if:
(a) the parent requests the information, or
(b) an administrative review is initiated under this rule.

F. Impartial due process hearing (administrative review).

(1) The parent, guardian, or surrogate parent may obtain review of proposed decisions on the following grounds:
(a) the child has not been identified or has been incorrectly identified as a child with special needs;
(b) the child's individualized education program is not appropriate to meet his needs;
(c) the child's individualized education program is not being implemented; or
(d) the child is otherwise being denied a free, appropriate education. In addition, a local educational agency may obtain review as provided by this section if a parent, guardian, or surrogate parent refuses to consent to the evaluation of the child for the purpose of determining whether the child is a child with special needs or for the purpose of developing a free appropriate educational program for the child.

(2) Except as otherwise provided in this section, the administrative review shall be initiated and conducted in accordance with Article 3 of Chapter 150B of the General Statutes, the Administrative Procedures Act.

(3) Notwithstanding the provisions of G.S. 150B-23(a) and G.S. 150B-33(b)(9), the issues for review shall be limited to those set forth in (F)(1) above.

(4) Notwithstanding the provisions of G.S. 150B-24, the hearing shall be conducted in the county where the child attends school or is entitled to enroll pursuant to G.S. 115C-366.

(5) Notwithstanding the provisions of G.S. 150B-23(e), the hearing shall be closed to the public unless the parent, guardian, or surrogate parent, prior to the beginning of the hearing, requests in writing that the hearing be open to the public.

G. Mediation.

(1) Mediation of disputes or disagreements regarding the identification of children with special needs and the provision of

special education for children with special needs prior to formal administrative review is encouraged.

(2) If a request for formal administrative review has not been filed, the superintendent, upon the request of a parent, guardian, or surrogate parent, shall meet, or designate an assistant or associate superintendent to meet, with the parent, guardian, or surrogate.

(3) The meeting shall be informal and the General Assembly intends that the meeting shall be nonadversarial, as required by G.S. 150B-22.

H. Recommended Decision and Final Decision.

(1) Following the hearing, the administrative law judge shall make a recommended decision to the State Board of Education. The recommended decision shall conform to and be prepared in accordance with G.S. 150B-34.

(2) The final decision shall be made by the State Board of Education in accordance with G.S. 150B-36. In its discretion, the State Board may appoint a panel of at least two members of the Board to make the final decision for and on its behalf in accordance with G.S. 150B-36, and if the Board elects to exercise its discretion, the decision of the panel shall be the final decision.

(3) The State Board shall have the power to enforce its final decision by ordering a local educational agency:

(a) to provide a child with an appropriate education;

(b) to place a child in a private school that is approved to provide special education and that can provide the child an appropriate education; or

(c) to reimburse parents for reasonable private school placement costs in accordance with the provisions of G.S. 115C-115 in the event it determines that the local educational agency did not offer or provide the child with an appropriate education and the private school in which the parent, guardian, or surrogate parent placed the child was an approved school and did provide the child an appropriate education.

I. Judicial Review. Any party aggrieved by the State Board's decision may seek judicial review in the state courts as provided in Chapter 150B, Article 4 of the General Statutes, or in federal court as provided in 20 U.S.C. G.S. 1415.

J. Child's Status During Proceedings.

(1) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the LEA and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(2) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in a public school until the completion of all the proceedings.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; 115C-116;
Eff. July 8, 1988; July 1, 1986; November 1, 1984; November 1, 1983; September 28, 1981; September 30, 1980; July 15, 1979

.1518 SELECTION OF SURROGATE PARENTS

A. Local educational agencies must nominate an individual to act as a surrogate when a special needs child's parent or legal guardian is unknown or unavailable. Surrogates must also be nominated for children who are wards of the state if the court determines that the parent(s) cannot or should not act on the child's behalf in educational matters.

B. The State Superintendent of Public Instruction, the Secretary of Human Resources and the Secretary of Correction shall appoint and approve persons as surrogate parents after such persons are recruited, trained and nominated by local educational agencies. Local educational agencies, the Council on Educational Services for Exceptional Children and the Governor's Advocacy Council for Persons with Disabilities may make recommendations to the Superintendent, the Secretaries, and local educational agencies of potentially eligible people to act as surrogate parents.

C. Surrogate parents shall have no interest that conflicts with the interests of the child represented and knowledge and skills that ensure adequate representation of the child. A surrogate parent must not be an employee of the State or any local government, educational or human resources agency responsible for or involved in the education or care of the child; however, a person is not to be considered an employee of the State or other agency solely because he or she is paid by the agency to serve as a surrogate parent, where volunteers are unavailable. In no case shall the person appointed be an employee of the local educational agency or directly involved in the education or care of the child. The State Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent.

D. The following two factors may also be considered in the selection of a surrogate parent, but are not mandatory:

(1) relationship to the child;

(2) whether the prospective surrogate parent is of the same race as the child.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; 115C-116;
Eff. July 8, 1988; July 15, 1979; Amended Eff. September 28, 1981.

.1519 PROCEDURES FOR DETERMINING AND ASSIGNING SURROGATE PARENTS

A. An employee of the Department of Human Resources, Department of Public Instruction, Department of Correction, other State agencies, residential school or hospital, any physician, judicial officer, and other person whose work involves education or treatment of children who knows that the parent or guardian is not known, unavailable, or that the child is a ward of the State, must file a request for assignment. A copy of this request shall be sent to the Secretary of Human Resources, Superintendent of Public Instruction or Secretary of Correction.

B. In an effort to determine whether or not the parents or guardians are in fact unknown, unavailable, or the child is a ward of the State, the local

educational agency should send a notice of the need for a surrogate to the adult in charge of the child's place of residence and to the parents or guardians at their last known address.

C. The local educational agency should request from the Superintendent, Secretary of Human Resources, or Secretary of Correction the assignment of a hearing officer where appropriate to weigh the evidence and determine whether or not the parents or guardians are unknown, unavailable, or the child is a ward of the State. A hearing under G. S. 150A may be sought by the person questioning the need for an appointment of a surrogate. This determination should be completed within a reasonable time following receipt of the original request for a surrogate; and the finding of the hearing officer should be sent to the local educational agency, State education agency, Department of Human Resources, or Department of Correction. If the hearing officer finds a need for a surrogate, such assignment should be made by the Superintendent or Secretaries within 30 days.

D. The Superintendent of Public Instruction, Secretary of Human Resources or Secretary of Correction makes the assignment of the surrogate parent to the child dependent upon whether it is a public instruction matter, human resources matter or correction matter. In all other cases the Superintendent of Public Instruction makes the assignment.

E. The Secretary of the Department may assign a surrogate parent for persons seventeen years old or younger committed to the Department when, after appropriate notice to parents or guardians as provided for in Section .1517, there has been no response or acknowledgement by the parent within 20 calendar days.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; 115C-116;
Eff. July 15, 1979.
Amended Eff. September 28, 1981.

.1520 RESPONSIBILITIES OF SURROGATE PARENTS

The surrogate parent shall represent the child in all matters relating to the identification, evaluation and educational placement of the child and the provision of a free appropriate public education to the child, including the appeal of any placement decisions.

History Note: Statutory Authority G. S. 115C-106(b); 115C-113; 115C-116;
Eff. July 15, 1979.

.1521 AGENCIES RESPONSIBLE FOR ADMINISTRATION OF PROCEDURES

Implementation of the procedures is the responsibility of the local educational agencies. All agencies not associated with city and county school admini-strative units, Department of Human Resources or the Department of Correction must also meet the standards described in this Section if they provide education services to children with special needs. Local educational

agencies shall ensure that the standards are met prior to contracting for services from such programs.

History Note: Statutory Authority G. S. 115C-106(b); 115C-110;
Eff. July 15, 1979.

.1522 FULL AND APPROPRIATE SERVICES

It is declared the policy of the State Board of Education in reaffirming action of the General Assembly in An Act to Provide for a System of Educational Opportunities for All Children Requiring Special Education, "to provide a free appropriate publicly supported education to every child with special needs ages five through twenty." The State Board reaffirms the finding of the General Assembly "that all children with special needs are capable of benefitting from appropriate programs of special education and training and that they have the ability to be educated and trained and to learn and develop." No child with special needs ages five through twenty shall be denied a free appropriate public education or be prevented from attending the schools of the local educational agency from which he/she receives services or in which he/she or his/her parents (guardians) reside or from attending a program in a city or county school administrative unit because he/she is a child with special needs. A student who becomes twenty-one years of age during the school year may continue to receive a free appropriate public education during that school year. The State Board of Education supports special education and related services for children with special needs on a permissive basis birth through age four and age twenty-one.

History Note: Statutory Authority G. S. 115C-106(b); 115C-107; 115C-110;
Eff. July 15, 1979;
Amended Eff. July 1, 1986; November 1, 1984

.1523 DISCIPLINARY SUSPENSIONS

A. In the event that a child with special needs exhibits behavior which, if the child were not a child with special needs, could result in the suspension or expulsion of the child from school for more than ten days during the school year, the LEA shall require a multidisciplinary team promptly to review the evaluations already completed for the child and conduct any additional evaluations necessary to determine if the behavior is caused by the child's special needs including (1) whether the child is presently receiving appropriate education, (2) whether medication is needed or present medication is appropriate. If the evaluation establishes no such relationship, the LEA may initiate its normal disciplinary procedures. If the evaluation does establish such a relationship, the LEA may not initiate its normal disciplinary procedures. The findings should be used in determining an appropriate program.

B. In an emergency situation, the child may be immediately suspended for a period not to exceed ten days. As soon as possible after the suspension has begun, and in no case beyond the end of the ten-day maximum period, except

under extraordinary circumstances, the multidisciplinary team shall conduct the evaluation described above in paragraph (a). To constitute an emergency situation, there must be a continuing threat to the child or to others due to the child's behavior.

C. In all actions involving suspension of a special needs child whose behavior is determined to be caused by his/her handicapping condition or lack of proper medication, the parties have available all due process rights of G.S. 115C-116 and 20n USC 1415.

History Note: Statutory Authority G. S. 115C-112;
Eff. October 1, 1978;
Amended Eff. November 1, 1984; January 1, 1983;
September 28, 1981; July 15, 1979.

.1524 EQUAL EDUCATION OPPORTUNITIES PLAN

A. Annually each local educational agency shall report to the Board the extent to which it is then providing special education for children with special needs. The annual report also shall detail the means by which the local educa-tional agency proposes to secure full compliance with the policy of this act, including the following:

(1) a statement of the extent to which the required education and services will be provided directly by the agency;
(2) a plan which describes the extent to which State Board standards are being met by the agency;
(3) the means by which the agency will contract to provide, at levels meeting State Board standards, all special education and related services not provided directly by it or by the State.

B. This report will be provided on forms supplied by the Division for Exceptional Children. Supplemental reports shall be submitted as required by the Division for Exceptional Children.

History Note: Statutory Authority G. S. 115C-110;
Eff. July 15, 1979.

.1525 ANNUAL CENSUS AND LISTING OF STUDENTS

A. Each local educational agency shall conduct an annual census of children with special needs, subdivided for "identified" and "suspected" children with special needs, and include their age, the nature of their exceptionality, their county and city of residence, their school administrative unit residence, whether they are being provided special educational or related services and if so by which department or agency. In taking a census, the city or county school administrative units shall collect the census information with the cooperation, participation, and assistance of all other State and local governmental departments and agencies providing or required to provide special education services to children with special needs. The census shall be of children with special needs ages birth through twenty-one inclusive.

B. Each city or county school administrative unit shall make and keep current a list of all children evaluated and diagnosed who are found to have special needs and who reside in that city or county. This shall include all children who are receiving home, hospital, institutional or other special education services, including those being educated within the regular classroom setting or in other special education programs including programs under the Department of Human Resources and Department of Correction.

C. When a newly identified child with special needs has been diagnosed or evaluated by personnel under the Department of Human Resources, appropriate personnel from the Department shall contact the city or county school administrative unit of the child's residence and inform them in writing of the evaluation and results. Exemptions from the Department of Human Resources will be considered by the Department of Public Instruction upon written request by the Secretary, Department of Human Resources.

History Note: Statutory Authority G. S. 115C-110;
Eff. July 15, 1979.

.1526 JOINT PLANNING

Local educational agencies should work together in planning and implementing programs and services for children with special needs. This includes city and county school administrative units and the programs and agencies of the Departments of Human Resources and Correction.

History Note: Statutory Authority G. S. 115C-110; 115C-113;
Eff. July 15,1979.

.1527 PRIVATE SCHOOLS - STANDARDS AND STATE BOARD APPROVAL

A. Children with special needs in private schools and facilities shall be provided special education and related services in conformance with the individualized education program, at no cost to their parent(s) or guardian(s), provided such children have been placed in or referred to such schools or facilities by an appropriate local educational agency. Local educational agencies shall determine whether the private schools and facilities meet the standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies. Local school administrative units may place children with special needs out-of-LEA only in approved private programs. The State and local educational agencies shall be excused from payment of the costs of special education and related services in a private school if a child is placed in that school by his parent(s) or guardian(s) against the advice of the State educational agency or local educational agency.

B. State departments, agencies and divisions and local educational agencies furnishing special education and related services to children with special needs may contract with private special education facilities or service providers to furnish such services as the public providers are unable to

furnish. A copy of all contracts between school administrative units and private schools shall be filed with the Division for Exceptional Children.

C. Parents who request a due process hearing concerning the appropriateness of a local educational agency's program for a pupil enrolled in a private school must present the pupil for observation and evaluation, if the local educational agency has not observed and evaluated the child within the last two years. If the local educational agency consents, or if written medical advice states that the pupil cannot be moved from his/her present placement for observation, then the parents may present evaluations and private school records concerning the pupil to the local educational agency instead of making him/her physically available. Failure of the parent to comply with the requirement of this subsection shall constitute a waiver of the parent's right to any hearing pursuant to the provisions of G. S. 115C-116.

History Note: Statutory Authority G. S. 115C-115;
Eff. October 1, 1978;
Amended Eff. November 1, 1984; September 30, 1980;
July 15, 1979.

.1528 RESPONSIBILITIES OF THE DIVISION FOR EXCEPTIONAL CHILDREN

A. The services of the Division for Exceptional Children are available to all local educational agencies and parents/consumers.

B. The Division provides consultative services to local educational agencies in planning, establishing, and maintaining programs/services for the instruction of children with special needs in the least restrictive environment.

C. The Division assists local educational agencies in developing and implementing an equal educational opportunities program. The Division also approves and monitor the equal educational opportunities plan.

D. The Division is responsible for developing a plan for a statewide census, collecting information and reporting to the State Board of Education. All local educational agencies must participate in the census.

E. The Division provides consultative services in developing and implementing the individualized education program for the handicapped, group education program for the academically gifted or written educational program for the pregnant to local educational agencies. The Division also monitors these programs.

F. The Division cooperates with other divisions in the Department of Public Instruction and other departments, agencies, and institutions of higher education to foster a collaborative effort on behalf of all children with special needs.

G. The Division disseminates information needed by parents, lay persons, legislators, organizations, and agencies upon request to keep them properly informed and to assist their understanding of programs for children with special needs.

H. The Division provides consultative services and technical assistance in the areas of curriculum development, instructional materials, adaptive devices, and use of technology for children with special needs.

I. The Division provides and supports staff development activities to

improve and upgrade competencies of regular and special class teachers, administrators and support personnel as they impact on children with special needs.

J. The Division coordinates and administers the activities of the following federal programs:

(1) Education of the Handicapped Act, Title VI, Part C;
(2) Education of the Handicapped Act, Part B, P.L. 91-230 as amended by P.L. 94-142 (Federal Programs);
(3) Education of the Handicapped Act, Part B, P.L. 94-142 as amended by by P.L. 99-457 (Preschool Grant Program);
(4) Education of the Handicapped Act, Part, D, P.L. 91-230 as amended by P.L. 95-49 (Professional Improvement of Teachers);
(5) Elementary and Secondary Education Act, Title I, P.L. 89-10 as amended by Public law 89-313.

K. The Division assists in developing, approving and monitoring special projects under Education of the Handicapped Act, Part B, P.L. 94-230 as amended by P.L. 94-142 and Elementary and Secondary Education Act, Title I, P.L. 89-10 as amended by P.L. 89-313 for all local educational agencies eligible for these funds and P.L. 93-380.

History Note: Statutory Authority G.S. 115C-110;
Eff. July 15, 1979.

.1529 QUALIFICATIONS AND CERTIFICATION OF EDUCATIONAL PERSONNEL

A. Personnel in City and County School Administrative Units

(1) Teachers of children with special needs shall hold as a minimum a regular class "A" teaching certificate.
(2) All teachers of children with special needs regardless of sources of funds must meet "in-field" teacher certification requirements. This means that teachers of the academically gifted must be certified in content areas in which they teach. Teachers of the handicapped must hold certification for each category of students who comprise thirty or more percent of each special class they teach. Excluded from this requirement are regular teachers with heterogeneous classes which may include one or more children with special needs. Personnel employed for services to exceptional children on a provisional certificate must work at a rate of six semester hours each year to be employed in these positions.
(3) Speech and language specialists shall have certification endorsement in speech and language to be employed.
(4) Teacher assistants shall have training which meets the standards of the State Board of Education.
(5) Psychologists who are employed by the school administrative units shall be certified by the State Department of Public Instruction. All school psychologists must meet Level II certification requirements to function independently. No new Level I certification will be issued after September 1, 1982. Psychologists in private practice contracted by the local school administrative units shall be licensed.

(6) Individuals designated as exceptional children program administrators shall hold Master's level certification in special education and certification in administration or supervision. Individuals holding Master's level certification in special education or a related area, but not certification in administration and/or supervision, shall complete nine semester hours of course work in supervision and/or administration. Individuals holding certification in administration and/or supervision, but not Master's level certification in special education or a related area, shall complete nine semester hours of graduate level course work in special education. Provisional certification may be granted to persons working on their Program Administrator's certification.

(7) Occupational therapists shall have graduated from an accredited program of occupational therapy. They shall be licensed by the State of North Carolina as occupational therapists.

(8) Physical therapists shall have graduated from an accredited program of physical therapy. They must be licensed by the State of North Carolina as physical therapists.

B. Personnel in Department of Human Resources and Department of Correction

(1) All teachers employed by the Department of Human Resources and the Department of Correction to provide special educational services to students of school age shall follow the same regulations that apply to public school teachers.

(2) In the Department of Human Resources, speech and language specialists shall have the appropriate certification endorsement or license in order to provide services for communicatively impaired children and youth. Speech and language specialists employed by schools for the deaf or blind must have certification endorsement in speech and language issued by the Department of Public Instruction. Speech and language specialists working in other Department of Human Resources programs must be licensed by the North Carolina Board of Examiners for Speech and Language Pathology and Audiology.

(3) In the Department of Correction, speech and language specialists must be licensed by the North Carolina Board of Examiners for Speech and Language Pathology and Audiology.

(4) Teacher assistants shall have training which meets the standards of the State Board of Education.

(5) Psychologists shall either be certified by the State Department of Public Instruction or licensed under the North Carolina Psychological Licensing Act.

(6) Occupational therapists shall have graduated from an accredited program of occupational therapy, have current registration and be registered or be eligible for professional registration with the American Therapy Association.

(7) Physical therapists shall have graduated from an accredited program of physical therapy. They must be licensed by the State of North Carolina as physical therapists.

C. Personnel in Private Schools

(1) All teachers employed in private schools to provide educational services to school-aged children with special needs shall follow the same regulations that apply to public school teachers.

(2) Speech-language specialists must be licensed by the North Carolina Board of Examiners for Speech and Language Pathology and Audiology.
(3) Teacher assistants shall have training which meets the standards of the State Board of Education.
(4) Psychologists shall either be certified by the State Department of Public Instruction or licensed under the North Carolina Psychological Licensing Act.
(5) Occupational therapists shall have graduated from an accredited program of occupational therapy, have current registration, and be registered or be eligible for professional registration with the American Therapy Association.
(6) Physical therapists shall have graduated from an accredited program of physical therapy. They must be licensed by the State of North Carolina as physical therapists.

History Note: Statutory Authority G. S. 115C-110;
Eff. October 1, 1978;
Amended Eff. November 1, 1984; September 28, 1981;
September 30, 1980; July 15, 1979.

.1530 CATEGORICAL EXCEPTIONAL CHILDREN FUNDS FOR LOCAL SCHOOL ADMINISTRATIVE UNITS

A. In the administration of these programs, the State Superintendent, the Controller and the State Board of Education shall deal solely with city and county superintendents and their local boards of education.

B. It is the policy of the State Board of Education that exceptional children be counted in the average daily membership used to compute all state ADM allocations. Central office and school-based costs of administration, clerical support, instruction (for mainstreamed children), instructional support services, plant operations, textbooks, supplies and materials, and other general costs are expected to be funded from "regular allotments" intended for the benefit of all children. In addition, to the extent that self-contained exceptional children earn teaching positions in the regular allotment, it is the intent of the State Board of Education that these positions be used for the benefit of exceptional children. The state categorical funds allocated to serve exceptional children are intended to provide the additional costs of these programs beyond the regular program costs described in paragraph (b) of this Rule.

C. Eligibility and Age of Children with Special Needs

(1) All children with special needs ages five through twenty shall be provided a free and appropriate education.
(2) Exceptional children funds may be used for children with special needs on a permissive basis birth through age four and age twenty-one.
(3) Evaluations of exceptional children for placement or for special services shall be performed by qualified personnel and in accordance with the placement procedures outlined in "Procedures Governing Programs and Services for Children with Special Needs."

D. Counting Procedures

(1) Eligible headcounts shall include only those pupils identified according to State Board of Education criteria and having an approved individualized education program for the handicapped, group education program for the academically gifted or written education program for the pregnant on file as of the reporting date.

(2) December 1 - P.L. 94-142 headcount/report. The December 1 headcount is used to generate federal funds for handicapped children ages 3-21 under the Education of the Handicapped Act P.L. 91-230, as amended by P.L. 94-142. Included in this headcount are children ages 3-5 who generate preschool grant program funds for both served and unserved/suspected students. Although academically gifted and pregnant school girls are reported for census purposes in the collection of December 1 data, funding for academically gifted and pregnant school girls is made based on the June 1 headcount only. (State funding is based on a combined count of all categories for children ages 5-20 in the December headcounts and adjusted in the June 1 headcount.)

(3) To be eligible for counting on December 1, a child must:

(a) Be enrolled in a special education program in a school or program which is operated/supported by a public agency which meets State Board of Education "Procedures Governing Programs and Services for Children with Special Needs";

(b) Be receiving special education (free appropriate public education) and related services (when appropriate) on December 1;

(c) Be properly identified as a child with special needs and have been placed in a class/program by the administrative placement committee;

(d) Have an individualized education program for the handicapped, a group education program for the academically gifted, or an educational program for the pregnant; and

(e) Not be counted on the December 1 ECIA Chapter 1, Handicapped headcount.

(4) December 1 - Education Consolidation and Improvement Act, Handicapped headcount/report. ECIA Chapter 1, Handicapped funds are made available to local educational agencies that are eligible and that wish to access funds under a Chapter 1 Project. Local educational agencies may count children on the December 1 ECIA Chapter 1, Handicapped headcount which, in turn, makes that unit eligible to submit a project for approval by the Division for Exceptional Children. However, local educational agencies may choose to count all children on the December 1 - P.L. 94-142 Handicapped headcount; in which event, a Chapter 1 headcount or project would not be submitted.

(5) To be eligible for counting on December 1, a child must:

(a) Have been counted/enrolled/served by an eligible state-operated/supported program during the 1971-72 or subsequent school years continuously for not less than 180 consecutive (not cumulative) school days;

(b) Be counted in average daily membership (ADM) of a local unit on December 1;
(c) Be properly identified as handicapped under federal regulations as outlined under the December 1 - P.L. 94-142 section and "Procedures Governing Programs and Services for Children with Special Needs"; and be receiving a free appropriate public special education program and related services in the unit;
(d) Have not reached his/her 22nd birthday on or before December 1; and
(e) Not be reported/counted on the December 1 - P.L. 94-142 Handicapped headcount.

E. Counting of Children with Special Needs Who Are Placed in a Public or Private School or Facility

(1) The local educational agency of legal residence is eligible to count the child in special education headcounts only if the local educational agency provides a special education and related service either directly or contractually.
(2) When a child with special needs is placed to receive his/her special education in a public or private school or facility other than the one in which he/she maintains legal residence, the local educational agency of legal residence for the child shall count the child in the October or December and June special education headcounts but not in average daily membership.
(3) When a child is placed by the local educational agency of legal residence in another local school administrative unit, the serving administrative unit shall count the child in average daily membership but not in the October or December and June special education headcounts.
(4) When a child is in residence in a group home, foster home or similar facility, the local school administrative unit where the group home, foster home or similar facility is located shall count the child in the October or December and June special education headcounts and in average daily membership.
(5) When a child has been certified as Willie M. the local educational agency of legal residence for the child shall count the child in the October or December and June special education headcounts and in average daily membership.
    (a) When the certified Willie M. child is served by another public school, the local school administrative unit of legal residence shall count the child in the October or December and June special education headcounts. The serving local school administrative unit shall count the child in average daily membership.
    (b) When the child is served by a non-public school facility (i.e. mental health center), the local school administrative unit of legal residence for the child shall not count the child in average daily membership.
(6) When a school-aged child is placed in a developmental day program, the local school administrative unit of legal residence

shall count the child in the October or December and June special education headcounts but shall not count the child in average daily membership.

(7) If the local school administrative unit operates a developmental day program, the child shall be counted in the October or December special education headcounts (for pre-school-aged and school-aged children); in the June special education headcount (for school-aged children); and in average daily membership (for school-aged children).

F. Contractual Agreements for Cooperative Programs in a Public or Private School or Facility

(1) The local educational agency has the ultimate responsibility for special education of handicapped children who reside within the school district and who the local educational agency serves either directly or contractually.

(2) When the local board of education places the child in another local educational agency or public or private school or facility, the local educational agency of legal residence of the child shall enter into a contractual agreement with the local educational agency or public or private school or facility.

(a) The contractual agreement shall specify the special education service(s) to be provided and the duration of that service during the school year.

(b) All contracts shall be negotiated prior to or at the beginning of each school year.

(c) Contracts shall be written for all such children whether or not any additional financial assistance is required for the child.

(3) When a local board of education releases the child to another local educational agency, the accepting agency has the responsibility for the special education of the child for that school year.

G. Allocation of State Exceptional Children Funds

(1) Allocations shall be made on a headcount basis and will be in "addition to" or "add-on" allocations to the average daily membership base allocation for all children.

(2) Add-on allocations for exceptional children will be determined by the State Board of Education.

(3) State funds will be allotted based on the annual June 1 headcount of handicapped, academically gifted and pregnant children ages five through twenty.

(4) Allotments for handicapped children are calculated based on the lesser of actual handicapped children or 12.5 percent of the best three of the first four months of average daily membership of the prior year by the local school administrative unit to determine the total handicapped children funded.

(5) Allotments for academically gifted children are calculated based on the lesser of actual academically gifted children or 3.9 percent of the best three of the first four months of average daily membership of the prior year by the local school administrative unit. The total is divided by three to determine the total academically gifted children funded.

(6) The total headcount of eligible handicapped and academically gifted children are added together to determine the total exceptional children for funding.

H. Allocation of Federal Handicapped Funds. Allocation of federal funds to each local school administrative unit shall be based on the December 1 actual eligible headcount of handicapped pupils, ages three through twenty-one, without caps and excluding the academically gifted and the pregnant.

I. State and Federal Funds.

(1) A separate per pupil average statewide allocation from state and federal funds will be determined based on the total eligible headcounts for each.

(2) Total state and federal allocations for the handicapped shall not exceed 100% of the regular pupil per capita state allocation for the current year based on the total eligible number without regard to categorical handicapping areas.

J. Utilization of State Exceptional Children Funds.

(1) Exceptional children funds may be used for the following:

(a) To employ full or part-time exceptional children program administrators to supervise programs for children with special needs. Persons employed in a position under these funds may be paid on a supervisor's salary schedule if they meet the requirements of the State Board of Education. The salary will be prorated based on the percentage of time assigned to supervision. Persons who do not qualify for payment on a supervisor's salary schedule will be paid on the appropriate teacher salary schedule. The following rule will be followed in approving funds to support a full- or part-time exceptional children program administrator position(s):

Average Daily Membership	Positions
0 - 23,999	1.0
24,000 - above	2.0

Local school administrative units that do not have an administrator for the academically gifted may use funds for an additional .5 position to provide leadership for the academically gifted program.

(b) Clerical Assistance. Clerical assistance may be provided through these funds using the rule listed in (J) (1) (a) of this rule.

(c) Teachers; speech, language and hearing specialists. Personnel employed with these funds shall be used exclusively to provide special education and/or related services to children with special needs in one or more of the following categories: autistic, deaf-blind, academically gifted, hearing impaired, mentally handicapped, multihandicapped, orthopedically impaired, other health impaired, behaviorally/emotionally handicapped, specific learning disabled, speech-language impaired, visually impaired, and pregnant. Adapted physical education teachers may be employed as long as they work exclusively with children with special needs. Teachers in bona fide team teaching situations are exempt from these requirements.

(d) Supportive personnel limited to physical therapists, occupational therapists, psychologists, audiologists and teacher assistants. Other specific supportive personnel necessary to support programs and related services for children with special

needs must have written approval from the Division for Exceptional Children prior to employment.

(e) Contracted services limited to medical evaluations, psychological evaluations, audiological services, educational services, including education services in sheltered workshops, developmental day centers and community residential centers.

(f) Equipment. Fifty dollars ($50) per child per year may be used to purchase equipment for identified exceptional children. Any deviation from this will require approval of the Division for Exceptional Children.

(g) Annual census activities to be provided through these funds must be approved by the Director, Division for Exceptional Children.

(h) Diagnostic and Evaluation Services. Funds may be used to extend the employment period for school psychologists employed from instructional support funds.

(i) Travel for itinerant teachers, occupational therapists, physical therapists, and audiologists.

(j) Staff Development. Staff development for special education personnel is to support the following:
  (i) to grant certification endorsement to teachers of children with special needs;
  (ii) to improve competencies, knowledge and skills of certified teachers and support personnel who work with children with special needs;
  (iii) to provide competencies for teachers moving into new roles (program areas serving children with special needs).

(k) Funds may be used to also provide staff development for parents of children with special needs.

(l) All out-of-state travel for staff development from these funds must have prior written approval by the Division for Exceptional Children. Out-of-state travel from the funds is limited to one person per local administrative unit per year.

(m) All staff development activities must be designed to achieve specific training objectives, and evaluations must be in writing, prior to the date(s) of the staff development activity.

(n) Exceptional children funds may be used for locally developed and conducted in-service training for regular educators in developing techniques and strategies for working with exceptional children in the regular classroom. Standards and regulations adopted by the State Board must be followed.

(o) Microcomputers and other special equipment to support instructional programs for children with special needs will be considered on a case-by-case basis. Approval must be granted in writing by the Division for Exceptional Children prior to purchase.

(p) Contract Services. When a child is placed in a program not operated by the local board of education, the program must:
  (i) offer an instructional program which will meet the special educational needs of the child, and
  (ii) be approved as a program for children with special needs for the school year in question by the appropriate public agency in the state where the school is located.

All contracts must meet the requirements of state and federal allocations.

(q) Hospital or Home Services. Funds may be used to provide services to children who are not categorized as special needs children but are in a hospital or home program.

(2) Exceptional children funds may not be used for the following:

(a) Building construction or renovation;

(b) To supplant locally funded programs and other state funds for materials and service positions;

(c) To supplant existing programs and services for children with special needs.

(d) Travel of directors and psychologists; except to attend in-state meetings as requested by the Director, Division for Exceptional Children.

(e) Student travel to and from school;

(f) To pay supplements;

(g) Field trips;

(h) Classroom furniture, storage shelves and cabinets, bookcases, copying machines and filing cabinets (unless specific approval has been requested from and granted by the Division for Exceptional Children), adding machines and dictaphones for office use, laminating and duplicating machines, office typewriters, professional textbooks, journals and periodicals, televisions, timeout booths, cameras and related photographic equipment, study carrels, AV carts, overhead projectors, 16 mm projectors, and large equipment for kitchens (stoves, water heaters, refrigerators, etc.);

(i) Summer programs;

(j) Tutorial programs;

(k) Medical services;

(l) Custodial services or day care;

(m) To serve students who exit from special education programs; or

(n) To provide services to non-exceptional children.

K. Set-Aside Funds. The State Board of Education shall establish set-aside funds for special allocations prior to the determination of per pupil allocations with the maximum amount per set-aside to be justified and approved annually by the Board and reported to local school administrative units. The Continuation Budget will contain a statement that gives the amount of set-aside funds approved by the State Board of Education.

(1) Out-Of-District Placements. The State Board of Education (or its delegate) may approve the use of the reserve fund toward the payment of the excess cost of the placement of a child in a program not operated by the local board of education within funds available and subject to the following conditions:

(a) State Board of Education review reveals that the local school administrative unit has approved alternative placement and the unit finds it is necessary for the child to be placed in a program not operated by the local board of education in order to receive an educational program or service which will appropriately meet the child's special educational needs.

(b) The local school administrative unit must fund an amount equal to the sum of the following per pupil allocations:

(i) the state's regular per pupil allocation,

(ii) the state's add-on per pupil allocation for exceptional children,

(iii) the federal per pupil allocation for exceptional children.

If the sum of those per pupil allocations does not cover the cost of the alternative placement, then the reserve fund may be approved, but in no case will the reserve fund pay more than fifty percent of the total cost of the alternative placement. Any cost then remaining must be assumed by the local unit, using any local, state or federal funds approvable for such expenditure. The Controller shall reimburse the local board of education for any reserve funds approved by the State Board of Education.

(c) Funds shall not be used for summer programs or for tutorial programs.

(d) Funds must be used only to provide special education and related services. Funds must not be used for medical services, custodial, or day care.

(e) Any application for a special reserve fund allocation must be submitted prior to enrolling the child in the program.

(2) Developmental Day Centers

(a) State categorically appropriated funds will be allocated to local school administrative units at a per month per child rate determined annually by the Division for Exceptional Children. Special developmental day center funds are based on the actual months of service up to 180 school days and shall provide for educational services, including personnel, supplies, materials and educational equipment.

(b) Local school administrative units whose developmental day center expenditures per child exceed the rate approved by the State Board may provide for the additional cost from other available funds.

(c) Once a child is transferred from the developmental day center and is to be served in the local school administrative unit by agreement between the two governing bodies, the local school administrative unit will then be eligible for an allocation at a per month per child rate established by the Division for Exceptional Children. For the initial year of transfer, funds for this purpose shall include the regular per pupil allocation, state add-on, and Title VI-B handicapped funds. These funds will be allocated by the State Board of Education as required for each fiscal year.

(d) Children served in developmental day centers may be counted for federal funds.

(e) Developmental day center headcounts, external to local school administrative units are not included in the projected regular average daily membership.

(f) If the decision is to place the child in the developmental day center(s), the local school administrative unit(s) must submit the following to the Division for Exceptional Children:

(i) Name of center;

(ii) Number of children;

(iii) Date of birth of each child;
(iv) Type of handicapping condition of each child;
(v) Rate per month per child (including a breakdown of center's educational costs per month for teachers' salaries, fringe benefits, support services such as occupational therapists, physical therapists, speech, etc.);
(vi) Copy of contract/agreement with center;
(vii) All required information (i-vi) must be submitted to Director, Division for Exceptional Children, State Department of Public Instruction, Raleigh, North Carolina 27603-1712 for review and approval. Following review and approval by the Division for Exceptional Children, the Controller will be notified to allocate funds to the requesting local school administrative unit.

(g) Personnel employed by local boards of education and/or independently operated developmental day centers may be employed for ten months.

(h) These funds are for children ages five through seventeen to provide special education and related services for no more than 180 school days.

(3) Funds for Community Residential Centers

(a) Funds will be allocated to the community residential centers based on a headcount of eligible handicapped children.

(b) The rate of funds per child shall be determined jointly by the Division for Exceptional Children and appropriate personnel from the community residential center. The amount will be based on the individualized education program.

(c) The amount of funds allocated to the community residential centers per child and per month will be based on a recommendation to the Controller by the State Superintendent.

(d) The local school administrative unit in which the child has legal residence shall certify to the State Board of Education that the placement for any child has been approved by the local superintendent.

(4) Group Home Placements

(a) The Division for Exceptional Children shall reserve an amount annually to provide special education and related services for the first-year placement of children with special needs in residential group homes.

(b) A local school administrative unit is eligible for group home funds for the initial year of group home placement only if the child has not been counted in either the December 1 or revised June 1 headcounts or projected regular average daily membership. After the initial placement, the local school administrative unit serving the child will count the child and will be eligible for the state and federal add-ons approved on a pro rata annual basis.

(c) Special allotments for children who have not been counted by local school administrative units for educational allocations will be made on a pro rata annual basis according to the following formula:
(i) Regular allocation;
(ii) State add-on (handicapped)
(iii) Federal add-on (Title VI-B only).

(d) Upon application for funds for initial year of placement, each local school administrative unit shall submit to the Division for Exceptional Children:
(i) Name of child;
(ii) Name and location of group home;
(iii) Date of birth of each child;
(iv) Type of handicapping condition;
(v) Type of program to be provided.

(e) Neither academically gifted nor pregnant students are eligible for federal funds.

(f) Without regard to the place of domicile of a parent or guardian, the cost of free appropriate public education for a child with special needs who is placed in or assigned to a group home, foster home or other similar facility, pursuant to State and federal laws, shall be borne by the local board of education in which the group home, foster home or other similar facility is located. Nothing in this section obligates any local board of education to bear any cost for the care and maintenance of a child with special needs in a group home, foster home and similar facility.

(5) Special Regional Allotments

(a) Provision is made for a separate allotment of teachers to be used in programs serving children with special needs from more than one local school administrative unit, such allotments to be known as Special Regional Allotments.

(b) Special Allotments may be made to selected local boards of education for teachers to serve children with special needs for the following purposes:
(i) Large general or special hospitals;
(ii) In special regional programs for children with special needs

(6) State-Arranged Staff Development Funds. Funds shall be appropriated separately for state-arranged staff development activities in the area of exceptional children. Such activities may include workshops, institutes, tuition/fee awards, special studies, and committee meetings. Participants to be trained in these activities may include superintendents, local directors, school psychologists, support personnel, principals, teachers, state-level personnel, parents, surrogate parents, and hearing officers.

History Note: Statutory Authority G. S. 115C-110; 115C-122;
Eff. October 1, 1978;
Amended Eff. July 1, 1986; November 1, 1984;
November 1, 1983; April 1, 1982;
September 28, 1981; September 30, 1980;
July 15, 1979.

L. Exceptional Children Related Services Funds.

(1) Exceptional children related services funds may be used to employ the following personnel or to contract for services: transportation safety assistants, adapted physical education specialists, audiologists, braillists, case managers, data managers, diagnostic-prescriptive specialists, interpreters for the deaf, occupational therapists, occupational therapist assistants, orientation and mobility specialists, parent counselors-trainers, physical therapists, physical therapist assistants, therapeutic recreation specialists, school health assistants, speech-language specialists, teacher assistants, and transition coordinators.

(2) The funds may also be used for travel of itinerant personnel.

.1531 TRANSPORTATION

A. Local boards of education are responsible for providing or paying the costs of transportation for children with special needs enrolled in schools or programs under their jurisdiction and are responsible for providing or paying the costs of transportation to any non-residential program, public or private, if the student has been placed in or assigned to that program by the local board of education. Special funds may be provided for this purpose through the Director, Division of Transportation of the State Board of Education, and are incorporated in the general transportation plan of the local board.

B. If a child with special needs is assigned to or enrolled in a residential program operated by or under the jurisdiction of the Department of Human Resources or the Department of Correction, the department operating the program or having the program under its jurisdiction or control is responsible for providing or paying the costs of transportation.

C. If a local area mental health center places a child with special needs in an educational program, the local area mental health center shall pay for the transportation of the child to the program.

D. The costs of transportation for a child with special needs placed in or assigned to a school or program outside the state shall be paid by the local educational agency placing or assigning the child in that school or program.

F. In no event shall reimbursement for the costs of transportation paid for any one child exceed the Department of Transportation allowance per mile unless it is demonstrated by the child or his/her parent that such limitation will work a hardship or is unreasonable. This justification must be approved by the local educational agency and appropriate state agency.

History Note: Statutory Authority G. S. 115C-110;
Eff. July 15, 1979;
Amended Eff. November 1, 1984.

.1532 MATERIALS, SUPPLIES AND EQUIPMENT

Local boards of education shall determine and make necessary arrangements

for providing the materials, supplies and equipment essential to the instructional programs for children with special needs.

History Note: Statutory Authority G. S. 115C-110;
Eff. July 15, 1979.

.1533 FUNDS TO DEPARTMENT OF HUMAN RESOURCES AND DEPARTMENT OF CORRECTION

Funds appropriated to the State Board of Education from either state or federal resources for special education and related services to children with special needs within the Department of Human Resources and Department of Correction will be distributed on formulas adopted by the State Board based on state and federal guidelines regarding the distribution of these funds.

History Note: Statutory Authority G. S. 115C-110;
Eff. July 15, 1979.

.1534 ORGANIZATION AND ADMINISTRATIVE STRUCTURE OF GOVERNOR'S SCHOOLS

The policies adopted by the State Board of Education for the Governor's Schools of North Carolina are as follows:

(1) that the Schools be administered and financed by the State Board of Education as a part of and in connection with the Division for Exceptional Children.

(2) that it will be the responsibility of the Director, Division for Exceptional Children, to coordinate the efforts of the Governors Schools directors with the Division and State Agency and to coordinate the outreach activities of the Governor's Schools.

(3) that the State Board of Education appoint and maintain for the Schools an advisory board to be known as "the Board of Governor's," said Board to be composed of ten citizens of the state, one of whom shall always be a state assistant superintendent; that the other nine members shall include a local superintendent, a teacher, a local director of gifted programs, and lay persons and shall be selected so as to represent the eight educational districts of the State; that the State Superintendent recommend to the State Board of Education for its approval the members of the Board of Governors for not more than two consecutive three-year terms; that the Board of Governors so constituted select from its membership annually a chairman and vice-chairman; that the presidents of the facilities housing the Schools serve as ex officio members of the Board of Governors; that the Board meet at least three times each year upon call of its chairman;

(4) that the Director, Division for Exceptional Children or his designee, serve as secretary to the Board; that the Board be given responsibility recommending the policies which shall govern the administration and supervision of the Schools and for observing and reviewing all phases of the Schools' operation;

(5) that the directors of the Governor's Schools are employees of the State Agency; that in accordance with the recommendations of the Board of Governors and with the approval of the Director, Division for Exceptional Children, the Governor's Schools directors will be given the responsibility for administering the affairs of the Schools under the direction of the Director, Division for Exceptional Children;
(6) that the directors of the Governor's Schools will recommend to the Director, Division for Exceptional Children, the number and types of positions required to staff the Schools;
(7) that the Director, Division for Exceptional Children, will recommend to the Board of Governors for its approval the number and types of positions required;
(8) that the directors of the Governor's Schools under the direction of the Director, Division for Exceptional Children, be responsible for the development and implementation of the curriculum of the Schools and also for recommending procedures which will insure the continuous evaluation of all aspects of the Schools and their programs. The Director, Division for Exceptional Children, with the approval of the Board of Governors, will prepare and submit to the State Superintendent and the State Board of Education the recommended budget for the operation of the Schools.
(9) that the directors of the Governor's Schools periodically submit reports to the Director, Division for Exceptional Children, on the status of the Schools and their outreach activities.

History Note: Statutory Authority G. S. 115C-110;
Eff. July 15, 1979;
Amended Eff. September 28, 1981.

.1540 PROGRAM COMPLIANCE VISIT

The Department of Public Instruction shall monitor all local educational agencies to determine compliance with appropriate state and federal laws and State Board "Procedures Governing Programs and Services for Children with Special Needs." Local educational agencies that are not to be monitored during the current year shall monitor their programs for children with special needs using procedures developed by the Department of Public Instruction. A report of the local monitoring shall be reported to the Department of Public Instruction.

History Note: Statutory Authority G. S. 115C-113;
Eff. September 30, 1980;
Amended Eff. September 28, 1981.

.1541 WILLIE M. CHILDREN

A. Willie M. class members are children who have been certified by the State Certification Committee in accordance with Civil Action No. cc79-0294, a class action suit on behalf of North Carolina children under the age of 18 who now or will in the future suffer from serious emotional, mental or neurological disorders which have been accompanied by behavior which is characterized as violent or assaultive.

B. Location and Identification of Class Members.

(1) Local school administrative units shall nominate to area mental health centers children who are suspected to be members of the Willie M. class.

(2) Local school administrative units shall request informed consent from parents to conduct additional evaluations, if needed.

(3) Local school administrative units shall notify the Department of Public Instruction regarding the number of children nominated.

(4) Local school administrative units shall keep an ongoing register of all identified Willie M. class members.

(5) The Department of Public Instruction will assign staff to the state level certification committee to assist in the certification of members of the Willie M. class.

C. Provision of Educational Services.

(1) For children certified as being members of the Willie M. class local school administrative units shall:

(a) provide special education services in compliance with an individualized education program;

(b) use data received through the evaluations conducted by the area mental health centers and other sources in writing the individualized education program in the area of education;

(c) provide special education and/or related services to certified Willie M. class members who are located in the local school administrative units, group homes or special facilities. Special programs may be provided in the group home or special facility.

(2) The decision as to the location of the program shall be determined jointly by the local board of education and the area mental health center with the local board of education making the final decision.

(3) Local school administrative units shall notify the Department of Public Instruction of the special education program being provided. The notification shall contain the following:

(a) types of services;

(b) the duration of services;

(c) any other information that the department deems relevant.

(4) The Department of Public Instruction will assist in the training of personnel who provide educational services to Willie M. class members.

D. Funding.

(1) These categorically appropriate funds will be allocated on a prorata annual basis, according to the following formula:

(a) Students not counted in the December 1 exceptional children headcount, the revised June 1 headcount or the projected regular average daily membership, and who will be served in

a public school setting or an educational placement in a group home or similar facility, will be eligible to receive the following:

(i) Regular allocation;
(ii) State add-on (handicapped);
(iii) Federal add-on (Title VI-B only);
(iv) Additional amount to be determined by the Division for Exceptional Children on an annual basis within funds available.

(b) Students not counted in the December 1 exceptional children headcount, the revised June 1 headcount but counted in the projected regular average daily membership, and who will be served in a public school setting or an educational placement in a group home or similar facility, will be eligible to receive the following;

(i) State add-on (handicapped);
(ii) Federal add-on (Title VI-B only)
(iii) Additional amount to be determined by the Division for Exceptional Children on an annual basis within funds available.

(c) Students counted in the December 1 exceptional children headcount, the revised June 1 exceptional children headcount and the projected regular average daily membership, and who will be served in a public school setting or an educational placement in a group home or similar facility, will be eligible to receive the following:

(i) State add-on (handicapped);
(ii) Federal add-on (Title VI-B only);
(iii) Additional amount to be determined by the Division for Exceptional Children on an annual basis within funds available.

(2) The following information must be submitted to the Department of Public Instruction for review:

(a) name of the child;
(b) age;
(c) educational services to be provided;
(d) program placement of the child;
(e) justification for additional funds.

A local superintendent must certify that the funds are needed to receive the funds.

(3) Any purchase of equipment that exceeds $50 per child per year must be approved by the Director, Division for Exceptional Children. Computers may not be purchased from Willie M. funds; however, software and programs are purchasable items.

E. For cooperative mental health and local school day treatment and educational programs, the educational component shall be supervised by a local school system. If several school systems contract with a single program, the superintendents shall agree on the school system to supervise.

F. In case of cooperative treatment and education programs in which the program is located in a facility other than a public school building, the following procedures will apply:

(1) Any student who attends the program for his/her full educational services will be counted in the ADM of the local school administrative unit which is supervising the program until the student returns to full-time status in his/her sending school administrative unit.

(2) Any student who attends the day treatment and educational program on a part-time basis will remain in the ADM of the sending school administrative unit.

G. Monitoring. The Department of Public Instruction through the Division for Exceptional Children shall monitor local school administrative units and/or other facilities that are providing educational services to Willie M. class members to determine if the program is appropriate to meet the needs of the child.

History Note: Statutory Authority G. S. 115C-106(b)
Eff. September 28, 1981
Amended Eff. November 1, 1984; January 1, 1983.

.1513 PROCEDURAL SAFEGUARDS

History Note: Statutory Authority G. S. 115C-113
Eff. October 1, 1978;
Repealed Eff. November 1, 1983

.1535 TRANSPORTATION
.1536 MATERIALS, SUPPLIES AND EQUIPMENT
.1537 EDUCATION EXPENSE GRANTS FOR CHILDREN WITH SPECIAL NEEDS
.1538 FUNDS TO DEPARTMENT OF HUMAN RESOURCES AND DEPARTMENT OF CORRECTION
.1539 ORGANIZATION AND ADMINISTRATIVE STRUCTURE OF THE GOVERNOR'S SCHOOLS

History Note: Statutory Authority G. S. 115C-110;
Eff. October 1, 1978;
Repealed Eff. February 1, 1980.